MINUTES OF CONVOCATION

Friday, 27th February, 1998
8:30 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Aaron, Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Bobesich, Carey, Carpenter-Gunn, Carter, Chahbar, Cole, Copeland, Cronk, Curtis, DelZotto, Eberts, Epstein, Feinstein, Finkelstein, Furlong, Gottlieb, Harvey, Jarvis, Krishna, Lamek, Lamont, Lawrence, MacKenzie, Manes, Marrocco, Millar, Murphy, Murray, Ortved, Puccini, Ross, Scott, Sealy, Stomp, Swaye, Topp, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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Convocation convened in Convocation Hall.

Reports of the Legal Aid Committee

Meetings of January 15th and February 11th, 1998

Mr. Armstrong presented the Reports of the Legal Aid Committee including a Report on the Proposed Enhancements for Convocation's consideration. He then raised the following questions for consideration by Convocation:

(1) should the Law Society remain the administrator of the Ontario Legal Aid Plan?
(2) should Convocation recommend to the government that it establish an independent agency to administer the Plan?
(3) should the Enhancements and changes to Certificates and other services be approved?
(4) should the Pilot Projects set out in the January 15th, 1998 Report be approved?

Legal Aid Committee
January 15, 1998

Report to Convocation

Nature of Report: Information

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The LEGAL AID COMMITTEE met on January 15th, 1998. In attendance were:

Committee members: Bob Armstrong (Chair), Neil Finkelstein (Vice Chair), Tamara Stomp, Carole Curtis, Allan Lawrence, Hope Sealy, Marshall Crowe, Gerry Swaye, Rich Wilson, Tom Carey, Jane Harvey and Frank Marrocco.

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

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

Also attending the meeting: Bruce Durno and Kathryn McLeod of the Criminal Lawyers Association, Susan Switch of the Family Lawyers Association and Raoul Boulakia of the Refugee Lawyers Association.

The following items are for your information:

1. Final Report on Proposed Pilot Projects

The Committee approved the Report on Proposed Pilot Projects. The report is attached as Appendix A and outlines the pilot projects that Legal Aid proposed to undertake in 1998 to test alternate serve delivery models.

2. Area Committee appointments

The Committee approved ten new appointments to area committees as recommended by the Provincial Director:

Algoma:	Noreen Francescutti
	Martin Pawelek
Frontenac:	John Done
	Daniel Scully
Toronto:	Paul Burstein
	Nadine Mayers
	David Tanovich
Etobicoke:	Nadine Mayers
	Karen McCullough
North York:	Daved Muttart

REPORT TO CONVOCATION OF THE LEGAL AID COMMITTEE
IN RESPONSE TO THE McCAMUS REPORT

Introduction

After the release of the McCamus Report, the Legal Aid Committee held a series of meetings during the months of September, October, November and December 1997 and January 1998. What follows is an overview of our deliberations. The attached appendices provide the specifics of the matters under consideration.

We did not attempt to review every last detail of the Report and come to a position on every single recommendation. Our view was that Legal Aid has so dominated the agenda of Convocation in the last three years that Benchers would read the Report and come to their own considered opinions. Nevertheless, there were two major recommendations of the Report which we believed that Convocation would benefit from our consultation and deliberation:

(1) the need for the Legal Aid Plan to innovate and experiment with different delivery models; and
(2) the future governance of the legal aid system

Our meetings included consultation with representatives of the criminal bar, the family law bar and the refugee and immigration bar. We also met with representatives of a number of organizations and agencies whose clients are principal users of the legal aid system. The groups included Assaulted Women's Help Line, Canadian Civil Liberties Association, Centre for Equality Rights, Coalition of Lesbian and Gay Rights, John Howard Society, Justice for Children, METRAC, Ontario Association of Interval and Transition Houses and Romero House. Two representatives of our Committee met with a group of judges (both criminal and family) from the Provincial Division. Summaries of the consultations with the various groups (except the Judges) are attached as Appendix "A".

1. Innovation and Experimentation

One of the major recommendations of McCamus is that the Legal Aid Plan should experiment with respect to delivery models " in order to maximize its ability to meet legal needs effectively and efficiently". At the direction of the Committee the senior staff of the Plan prepared a study on the nature and feasibility of pilot projects which might be undertaken by the Plan.

The Plan staff has prepared a comprehensive report on Proposed Pilot Projects which is attached as Appendix "B". The Report recommends that the judicare system must remain the core element of legal aid delivery in Ontario. However, it would appear that the time has now come to evaluate other forms of service delivery to ascertain if we can improve access to legal services which are of a higher quality and more cost efficient. If the pilot projects are to be established the Plan would try to minimize the impact on the bar in those locations where they are set up. The staff's report examines a broad range of pilot projects, some of which could be implemented before the end of the MOU if the appropriate funding was available.

2. Future Governance

The Committee spent a great deal of time on the issue of governance. The McCamus Report recommended "that the governance of the legal aid system in Ontario should be assigned to a new independent statutory agency".

In its deliberations the Legal Aid Committee considered three proposals for governance of the Legal Aid system:

(i) the present system administered by the Law Society;
(ii) the McCamus model; and
(iii) a proposal suggested by Neil Finkelstein ("the Finkelstein model").

(i) The Present System Administered by the Law Society

The Law Society has administered the Plan since 1967 and presumable will continue to do so until at least the expiry of the Memorandum of Understanding (MOU) on March 31, 1999. It is the view of the Committee that the history of legal aid in Ontario is a history of which the Law Society can be justly proud. It has been an effective instrument in providing access to justice for the disadvantaged in Ontario. Simply put, we believe that we have administered one of the best legal aid plans in the world. While we do not say that the system has been perfect, much of the criticism which has been levelled against it in the last few years has not, in fact, been justified. Most of the major problems in recent years are attributable to lack of funding and the consequence of restructuring the available services and reducing the tariff under which those services are performed. We believe that there is a profound need to expand the available services and to increase the tariff. There has been no increase in the hourly rates paid to lawyers providing legal aid services since 1987.

In our consultations with the various groups, there appeared to be a mixed response as to whether the Law Society should continue to administer the Plan. We understand that the Criminal Lawyers' Association is now strongly of the view that the Law Society should no longer administer the Plan. However, a group of criminal lawyers in Ottawa favour the status quo as does the Family Lawyers Association (assuming proper funding). The majority of immigration and refugee lawyers with whom we met appear to favour the status quo. The Canadian Bar Association Ontario, on the other hand, supports the McCamus recommendation as long as there is proper funding and a number of other conditions are satisfied. Attached as Appendix "C" is a copy of the CBAO resolution on legal aid governance. The user groups with whom we met expressed a variety of opinions on the subject.

The Law Society made its own submission on the issue of governance to McCamus in May 1997. In its submission to McCamus the Law Society stated inter alia:

> The overwhelming sentiment expressed time and again by Convocation, regardless of the precise legal aid topic being considered, is that access to justice for the disadvantaged of the province is the fundamental reason for operating the Legal Aid Plan and the lawyers as a profession have a commitment to such access which cannot and should not be doubted by anyone.

Our submission to McCamus addressed the issue of conflict of interest and independence from the legal profession and stated in part:

> While the members of the legal profession elect most of the governors of the Law Society, that fact in itself would only create a conflict of interest or make the Law Society not independent of the profession if, following such election, the mandate of the governors was to promote the self-interest of lawyers. The entire scheme itself - governance and the role statement of the Law Society are quite to the contrary of that notion.

The Law Society acts independently of the legal profession in that it must and does prefer the interest of the public wherever necessary regardless of the fact that most of the Benchers (governors) are elected by members of the profession.

The conclusion to the Law Society's submission to McCamus also stated in part:

Without a promise of proper funding for legal aid, it is questionable whether the Law Society of Upper Canada will wish to remain as administrator of the Plan when the MOU expires.

Should the Plan continue and another body be appointed administrator of the Plan it must also be independent, receive proper funding and be free from government interference, given the government's role as the prosecutor in the criminal courts and as one of the major litigants in the civil courts. The objectives for and expectations of such an administrator must also be determined and stated so that a proper structure can be put in place and monitored against a known standard.

Attached as Appendix "D"is a summary of the administration of the Plan since 1993 prepared by Heather Ross, Vice-Chair of the Committee, and the relevant documents including the MOU and the submission of the Law Society to McCamus.

(ii) McCamus Model

The McCamus Report stated that "The most fundamental issue we must address is whether the Law Society should continue to have responsibility for governance of legal aid in Ontario." In concluding that the Law Society should give up the administration of legal aid, McCamus considered a number of factors including:

(a) Governance of legal aid by the legal profession is an unusual arrangement. Only two other Canadian provinces, Alberta and New Brunswick, have adopted our model;

(b) "Whether the Law Society can truly insulate itself from the interests of the profession." The Report concludes that a substantial number of members of the profession have a direct financial interest in the continuation of the status quo;

(c) The need to bring together the certificate side of the system with the clinic system would be difficult to accomplish if the Law Society remains as administrator;

(d) The fact that provincial Law Societies favour the judicare model is seen as a restraint to innovation and experimentation.

The structure of the McCamus model is attached as Appendix "E".

(iii) The Finkelstein Model

One of the major concerns that the Committee had with McCamus was its failure to adequately address the issue of whether an "independent statutory agency" was independent from the Ministry of the Attorney General. Neil Finkelstein, Vice-Chair of the Committee, has addressed this issue in his letter of December 17, 1997, which is attached as Appendix "F". His conclusion is that:

The Ministry of the Attorney General has an even more fundamental conflict with respect to Legal Aid than the Law Society of Upper Canada. The Attorney General employs, directly or indirectly, all of the legal counsel who appear on the government's behalf in Ontario. Crown attorneys prosecute those charged with criminal offences. Crown counsel act for state agencies against individuals in family custodial matters. In all of these cases, the Ministry of the Attorney General is effectively the prosecutor. It would be perverse to create a structure whereby the Attorney General who carries the burden of these prosecutions should appoint the administrators of the Legal Aid Plan, and be responsible for their budget allocations, where those administrators must decide:

i) what level of funding is required to fund the defence against the Attorney General's officials;

ii) how to best present and implement funding applications; and

iii) how legal aid funds should be allocated among services.

It is obvious that the Attorney General who prosecutes cases has a fundamental conflict when he seeks a role in determining how the defence should be funded, and which defence services should be paid for out of legal aid. that is particularly so since the consequence of these decisions is that crown counsel may be opposed by either unrepresented litigants, or counsel who are insufficiently prepared due to an inadequate tariff.

In the result, Mr. Finkelstein recommends a model which is independent of both the Law Society and the Attorney General.

January 1998

Robert P. Armstrong, Q.C.
Chair
Legal Aid Committee

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

1.	Reports on the Consultations.	(Appendix A)
2.	Proposed Pilot Projects - Final Report.	(Appendix B)
3.	CBAO Resolution Re: Ontario Legal Aid Review.	(Appendix C)
4.	Summary of the Present Position on Governance including The Memorandum of Understanding (Option 1), Access to Justice: Legal Aid in Ontario and Governance of the Ontario Legal Aid Plan.	(Appendix D)
5.	The McCamus Model of Governance.	(Appendix E)
6.	The Finkelstein Model of Governance.	(Appendix F)
7.	OLAP Financial Reports - October 1997.	(Appendix G)

Legal Aid Committee
February 11, 1998

Report to Convocation

Nature of Report: Decision-Making
Information

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To be handed out at Convocation Friday, February 27, 1998: Report on certificate enhancements

The LEGAL AID COMMITTEE met on February 11, 1998. In attendance were:

Committee members: Bob Armstrong (Chair), Heather Ross (Vice Chair), Tamara Stomp, Carole Curtis, Allan Lawrence, Hope Sealy, Gerry Swaye, Rich Wilson, Tom Carey, Jane Harvey and Abe Feinstein, Jane Harvey and Derry Millar.

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

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

Also attending the meeting for the Rowbotham discussion: Clayton Ruby and Paul Copeland.

The following items are for your information:

1. Financial Reports - December 1997

The financial reports for December 1997 are attached.

2. Area Committee Appointments

The Committee approved five new appointments to area committees as recommended by the Provincial Director: Tracey McCann, Judith Seligy and Ross Stewart in Ottawa-Carleton and Terrence Edgar and W. John McCulligh in Peel Region.

3. Rowbotham

Effective immediately, the Plan will no longer send either outside or in-house legal counsel to advocate for the Plan in Rowbotham applications. The Plan will make its employees available as voluntary witnesses to give evidence to the court if it is relevant and necessary.

The following items are for your approval:

4. Duty Counsel Financial Eligibility Testing - Final Report

The final report and recommendations on financial eligibility testing for duty counsel services is attached.

5. Certificate enhancements

A report on certificate underspending and recommendations to enhance service will be handed out at Convocation.

6. Extension of the Divorce Law Pilot

The Divorce Law Office Pilot project will be extended to December 31, 1998. The pilot will be re-examined again by the Committee in July, to determine whether its services should be delivered through a larger pilot office.

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

(1) Copy of the Ontario Legal Aid Plan Financial Reports - December 1997. (Appendix A)
(2) Final Report to the Ontario Legal Aid Committee - Duty Counsel Financial Eligibility Testing - February 11, 1998 by George Biggar, Deputy Director, Legal. (Appendix B)

REPORT TO CONVOCATION OF THE LEGAL AID COMMITTEE
RE: THE FINKELSTEIN MODEL OF GOVERNANCE

The Legal Aid Report of January 15, 1998, set out three governance options. One of those options is the Finkelstein model. The Legal Aid Committee has given further consideration to the Finkelstein model and recommends that it contain the following elements:

l) The administration of the Legal Aid Plan would be carried out by a statutory corporation independent of the LSUC ("NEWCO")

2) The board of directors of NEWCO would be appointed as follows:

(i) An 11-person board would be appointed by an Order in Council.

(ii) LSUC would nominate five (5) persons to the board and these five persons would be appointed by an Order in Council for a fixed term.

(iii) The government would nominate and by Order in Council appoint a further five board members for the fixed term in (ii) above.

(iv) The eleventh board member, the chair person, will be appointed by an Order in Council for a fixed term (3 to 5 years) from a list of three names recommended by a nominating committee comprised of the Attorney General, the Treasurer and a mutually agreed upon third party. Of course, the Cabinet could ask for further lists if, for any reason, no appointment was made from the first list.

(v) There would be security of tenure for appointees and there would also be staggered terms.

(vi) The chair position would probably be full time.

3) This model would result in an independent board of directors. It is intended that the board be multi-skilled, broadly based and representative of a variety of perspectives and supported by advisory committees representing the various areas of the law serviced by the plan.

4) REPORTING
NEWCO would file an annual report with the Legislature.

5) The Chair of the Board of Directors would have the right to appear annually before a legislative committee.

6) ACCOUNTABILITY
The Provincial Auditor would audit NEWCO

7) FINANCING
The Attorney General would be responsible for securing funding, legislative change and ensuring the mandate of NEWCO be maintained. This is a change in the original Finkelstein model.

8) NO FINANCIAL CONTRIBUTION BY THE MEMBERS OF THE SOCIETY
The members of the Law Society would not contribute to administrative expenses. Putting it in current terms, in 1999 the $147 per year Legal Aid levy would be eliminated.

9) The 5% statutory deduction would also be eliminated. This approach is consistent with current social policy. No other segment of sociey subsidizes a social welfare program. For example, dentists do not contribute to the costs of a dental plan for the poor and physicians do not make a per capita contribution to the costs of the Ministry of Health.

February 1998

Robert P. Armstrong
Chair
Legal Aid Committee

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

1. Copy of the Report to Convocation of the Legal Aid Committee re: Proposed Enhancements and Changes to Certificates and other Services.

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In response to the McCamus Report the Legal Aid Report of January 15th, 1998 set out three governance options, one being the Finkelstein model, which was put before Convocation for consideration with the amendment that the Attorney General be responsible for securing funding, legislative change and ensuring the mandate of the corporation is maintained.

A lengthy debate followed.

Convocation recessed at 10:35 a.m. and resumed at 11:00 a.m.

It was moved by Mr. Armstrong, seconded by Mr. Finkelstein and Ms. Ross that the Law Society cease administering the Legal Aid Plan on or before the conclusion of the MOU on condition that the government establish an independent corporation to provide legal aid services to the people of Ontario in accordance with the Finkelstein model as amended and that the Treasurer, Chair and Vice-Chairs of the Legal Aid Committee and the Chair of the Clinic Funding Committee be authorized to enter into discussions with the Attorney General to accomplish this end.

Ms. Eberts asked that the funding for the Legal Aid Plan be determined in multi-year plans.

The mover and seconders of the motion accepted the amendments of Messrs. Carey and Swaye that the phrase "on or before the conclusion of the MOU" be changed to "on or about" and the words "Chair and Vice-Chairs of the Legal Aid Committee" be changed to "Chair or Vice-Chairs of the Legal Aid Committee and the Chair of the Clinic Funding Committee or their designates".

It was moved by Ms. Puccini, seconded by Mr. Gottlieb that the motion be amended to state that the new corporation be based on the judicare model.

The Treasurer ruled the Puccini/Gottlieb motion out of order.

The Armstrong/Finkelstein/Ross motion as amended was voted on and adopted.

ROLL-CALL VOTE

Aaron	For
Adams	For
Angeles	For
Armstrong	For
Arnup	For
Backhouse	For
Banack	For
Bobesich	For
Carey	For
Carpenter-Gunn	For
Carter	For
Chahbar	For
Cole	Against
Copeland	Abstain
Cronk	For
Curtis	Against
DelZotto	For
Eberts	For
Epstein	For
Feinstein	For
Finkelstein	For
Gottlieb	For
Harvey	For
Krishna	For
Lamek	For
MacKenzie	For
Manes	For
Marrocco	For
Millar	For

Murphy	For
Murray	For
Ortved	For
Puccini	Abstain
Ross	For
Scott	For
Sealy	For
Stomp	Abstain
Swaye	For
Topp	For
Wilson	Against
Wright	Against

Vote 34-4

Enhancements

It was moved by Mr. Armstrong, seconded by Mr. Finkelstein and Ms. Ross that Convocation approve the following enhancements and changes to Certificates and other services in the amount of $32 million for the first year:

(1) abolishing application fees (effective March l , 1998)
(2) abolishing Statutory deduction
(3) increasing duty counsel rate from $57/hour to $70/hour (effective March l, 1998)
(4) increasing tariff hourly rate from $67/hour to $70/hour
(5) criminal changes (effective April l, 1998)
(6) family changes (effective April l, 1998)
(7) immigration changes (effective April l, 1998)
(8) other civil changes (effective April l, 1998)

Carried

Pilot Projects

It was moved by Mr. Scott, seconded by Mr. Copeland that the Pilot Project for expanded Duty Counsel -Criminal be deleted.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	Against
Angeles	For
Armstrong	Against
Arnup	Abstain
Backhouse	For
Bobesich	For
Carey	Against
Carpenter-Gunn	For
Carter	Abstain
Chahbar	Against
Cole	For
Copeland	For
Curtis	Against
DelZotto	Against

Eberts	For
Epstein	Against
Feinstein	Against
Finkelstein	Against
Gottlieb	For
Harvey	Against
Krishna	Against
Lamek	Abstain
MacKenzie	For
Manes	For
Marrocco	For
Millar	Against
Murphy	For
Murray	For
Ortved	For
Puccini	For
Ross	Against
Scott	For
Sealy	Against
Stomp	For
Swaye	For
Topp	For
Wilson	Abstain
Wright	For

Vote 21-14

It was moved by Mr. Scott, seconded by Mr. Copeland that the Pilot Project for the contracting out of criminal cases be deleted.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	Against
Angeles	For
Armstrong	Against
Arnup	Abstain
Backhouse	For
Bobesich	For
Carey	Against
Carpenter-Gunn	For
Carter	Abstain
Chahbar	For
Cole	For
Copeland	For
Curtis	Abstain
DelZotto	Against
Eberts	For
Epstein	For
Feinstein	Against
Finkelstein	Against

Gottlieb	For
Harvey	Against
Krishna	Against
Lamek	For
MacKenzie	For
Manes	For
Marrocco	For
Millar	Against
Murphy	For
Murray	For
Ortved	For
Puccini	For
Ross	For
Scott	For
Sealy	For
Stomp	For
Swaye	For
Topp	For
Wilson	For
Wright	For

Vote 27-9

It was moved by Mr. Scott, seconded by Mr. Copeland that the Criminal Law Office Pilot Project be deleted.

Carried

It was moved by Mr. Copeland, seconded by Ms. Curtis that the Pilot Project for the contracting out of youth offender cases be deleted.

Carried

It was moved by Mr. Armstrong, seconded by Mr. Finkelstein and Ms. Ross that the remainder of the following Pilot Projects be approved: Expanded Duty Counsel - Family, Family and Refugee Law Offices, Alternative Duty Counsel - Young Offenders, Contracting of Immigration Law and other Civil. (January 15th, 1998 Report)

Carried

ROLL-CALL VOTE

Aaron	Against
Adams	For
Angeles	For
Armstrong	For
Arnup	Abstain
Backhouse	For
Bobesich	Against
Carey	For
Carpenter-Gunn	Against
Carter	For
Chahbar	For
Cole	Against
Copeland	Against
Curtis	Against

DelZotto	Against
Eberts	Against
Epstein	For
Feinstein	Against
Finkelstein	For
Gottlieb	Against
Harvey	For
Krishna	For
Lamek	For
MacKenzie	For
Manes	For
Marrocco	Against
Millar	For
Murphy	For
Murray	Against
Ortved	For
Puccini	Against
Ross	For
Scott	For
Sealy	For
Stomp	Against
Swaye	Against
Topp	Against
Wilson	For
Wright	Against

Vote 21-17

It was moved by Ms. Backhouse, seconded by Mr. MacKenzie that any Pilot Projects be subject to committed funding by the government.

Lost

ROLL-CALL VOTE

Aaron	For
Adams	Against
Angeles	For
Armstrong	Against
Arnup	Abstain
Backhouse	For
Bobesich	For
Carey	Against
Carpenter-Gunn	For
Carter	Against
Chahbar	For
Cole	For
Copeland	For
Curtis	For
DelZotto	Against
Eberts	For
Epstein	Against
Feinstein	Against
Finkelstein	Against

Gottlieb	For
Harvey	Against
Krishna	Against
Lamek	Against
MacKenzie	For
Manes	Against
Marrocco	For
Millar	Against
Murphy	Against
Murray	For
Ortved	Against
Puccini	For
Ross	Against
Scott	Against
Sealy	Against
Stomp	For
Swaye	For
Topp	For
Wilson	Against
Wright	For
Treasurer	Against

Vote 20-19

It was moved by Mr. Adams, seconded by Mr. Wilson that the Pilot Projects be accepted on the condition from the government that the Law Society would not be liable.

Withdrawn

THE REPORTS AS AMENDED WERE ADOPTED

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:30 P.M.

CONVOCATION RESUMED IN CONVOCATION ROOM AT 2:30 P.M.

PRESENT:

The Treasurer, Aaron, Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Bobesich, Carey, Carter, Chahbar, Copeland, Cronk, Curtis, DelZotto, Eberts, Epstein, Feinstein, Finkelstein, Gottlieb, Harvey, Jarvis, Krishna, Lawrence, MacKenzie, Manes, Marrocco, Millar, Murphy, Murray, Ortved, Puccini, Ross, Scott, Stomp, Swaye, Wilson and Wright.

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IN PUBLIC

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MOTION - REPORTS TAKEN AS READ

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the following Reports to be taken as read be adopted excluding the Admissions and Equity Committee Report:

Executive Director of Education Report and Addendum
Clinic Funding Committee Report
Finance and Audit Committee Reports (1 Report in camera)
Professional Development and Competence Committee Report

Carried

Report of the Executive Director of Education and Addendum

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Executive Director of Education asks leave to report:

B.
ADMINISTRATION

B.1. READMISSION FOLLOWING RESIGNATION AT OWN REQUEST

B.1.1. The following former member applies for readmission and has met all the requirements in that regard:

	David Sydney Steinberg	Called:	February 7th, 1996
		Resigned:	February 28th, 1997

B.2. REINSTATEMENT FOLLOWING SUSPENSION

B.2.1. The following suspended member applies to be reinstated upon payment of all arrears of fees:

B.2.2.	Joan Ellen Boudreau	Called:	March 31st, 1989
		Suspended:	February 23rd, 1990 (for non-payment of the annual fee)

B.3. APPLICATION TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

B.3.1. The following apply to be certified as a foreign legal consultant in Ontario:

Joan Ruth Beck	The State of New York - Shearman & Sterling
Brett Albert Alferd Carron	The State of New York - Shearman & Sterling
Eileen Marie Martin	The State of New York - Kavinoky & Cook

B.3.2. Their applications are complete and they have filed all necessary undertakings.

B.4. MEMBERSHIP UNDER RULE 50

B.4.1. (a) Retired Members

B.4.2. The following members are at least sixty-five years of age and fully retired from the practise of law, and request permission, under Rule 50 made under the Law Society Act, to continue their memberships in the Society without payment of annual fees.

Barry Donald Brown	Eagle Lake
James Alfred Lennox Brown	Sharon
John Douglas Burgar	Barrie
Calvin Clark Calder	Beaverton
Edward Ciemiega	Mississauga
John Banks Clements	Toronto
Donald Archibald Crosbie	Toronto
Philip Crouch	Welland
Albert Lorne Cunningham	Peterborough
Eric Victor Ambrose DeBecker Jr	Toronto
Donald John Donahue	Toronto
Thomas Gavin Edmondstone	Renfrew
Jerome Jack Garson	Windsor
Peter Currie Gillespie	London
John Gerald Goodwin	Toronto
Robert John Stevens Gray	Toronto
John Donald Kapusta	Delhi
Elias Alex Kremer	Toronto
Bruce Edward McGuire	Schomberg
Ronald Charles McLean	Oakville
Bernard Joseph Monaghan	Toronto
George William Priddle	Sault Ste. Marie
Douglas Hannay Proudfoot	London
Robert Campbell Rutherford	Toronto
Lionel Howard Schipper	Toronto
Donald Eric Smith	Toronto
Josephine Annette Smith	Guelph
Robert Oliver Snyder	Waterloo
Keith Gordon Stone	Sarnia

Ernest Joseph Tadman	Toronto
Allen Robert Taylor	Toronto
Robert Marshall Turnbull	Toronto
John David Webster	Toronto
Charles Lane Wilson	Barrie

*see also Membership Restored

B.4.3. (b) Incapacitated Members

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

Michael David Baker	Toronto
Paul Edward Joseph Curran	Edmonton, AB
Harvey Finkelstein	North York
Katherine Isobel O'Shaughnessy MacGregor	Whitby
Sidney Howard Rotberg	Kitchener
Morrey Solway	Toronto

B.5. RESIGNATION - SECTION 12 OF REGULATION 708 MADE UNDER THE LAW SOCIETY ACT

B.5.1. The following members apply for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. In all cases the annual filings are up to date. In cases where the member was engaged in the practice of Ontario law for any amount of time, the member has declared that all trust funds and clients' property for which they were responsible have been accounted for and paid over to the appropriate persons. They have further declared that all clients' matters have been completed and disposed of, or arrangements made to the clients' satisfaction to have their papers returned to them, or have been turned over to another lawyer. The Complaints, Audit and Staff Trustees departments all report that there are no outstanding matters with these members that should prevent them from resigning. These members have requested that they be relieved of publication in the Ontario Reports:

1. Stephen Dennis James Braithwaite of Markham, was called to the Bar on March 24, 1972 and practised law from 1972 to 1997. He was suspended October 1, 1997 for non-payment of the Errors and Omissions Insurance levy. The 1998 annual fee is outstanding.

2. Francois Normand Carrier of Edmundston, NB was called to the Bar on February 3, 1994 and has never practised Ontario law. The 1998 annual fee is outstanding.

3. Mark Antonin Georges Drumbl of Manhattan, NY, was called to the Bar on February 7, 1996 and practised law from February 1996 to June 1997. The 1998 annual fee is outstanding.

4. Gerald Joseph Fahey of Vancouver, BC was called to the Bar on March 22, 1991 and was engaged in the practise of law from March 1993 to December 1995. The 1998 annual fee is outstanding.

5. Verena Jean Fraser of Burlington, was called to the Bar on June 24, 1994 and was engaged in the practise of law from October 1994 to June 1995. The 1998 annual fee is outstanding.

6. John Hough Haydon of Ottawa, was called to the Bar on April 10, 1964 and practised law from 1964 to 1996. The 1998 annual fee is outstanding.

7. Lawrence Jacob Papoff of Toronto, was called to the Bar on March 23, 1973 and was engaged in the practise of law from 1973 to 1995. The 1998 annual fee is outstanding.

8. Richard Charles Bosworth Risk of Toronto, was called to the Bar on April 7, 1961 and was engaged in the practise of law from April 1961 to November 1961. The 1998 annual fee is outstanding.

9. Seymour Wilfred Schwartz of Toronto, was called to the Bar on March 21, 1969 and has never practised Ontario law. The 1998 annual fee is outstanding.

10. Gregory James Firth Sukornyk of Toronto, was called to the Bar on February 16, 1995 and has never practised Ontario law. The 1998 annual fee is outstanding.

11. Carolyn North Terry of Markham, was called to the Bar on April 10, 1981 and has never practised Ontario law. The 1998 annual fee is outstanding.

B.6. MEMBERSHIP RESTORED

B.6.1. The following member has given notice that he ceased to hold judicial office and wishes to be restored to the Rolls of the Law Society pursuant to Section 31(2) of the Law Society Act:

	Effective Date
*Robert Campbell Rutherford Ontario Court of Justice (General Division)	January 23, 1998

*see also Membership under Rule 50

C.
INFORMATION

C.1. ROLLS AND RECORDS

C.1.1. Deaths

Robert Douglas Osborne Newmarket	Called: June 29, 1950 Died: May 16, 1996
Michael Morris Walters Kitchener	Called: June 19, 1952 Died: October 13, 1997

C.2. CHANGES OF NAME

C.2.1. From	To
Sheryl Fischer	Sheryl Fischer Watson (Change of Name Certificate)
Antonietta Pietrantoni Hardy	Antonietta Pietrantoni (Certificate of Canadian Citizenship)

Carolyn Doreen Routledge	Carolyn Doreen Koziskie (Marriage Certificate)

C.3. ROLLS AND RECORDS

C.3.1. (a) Deaths

C.3.2. The following members have died:

Carl Keyfetz North York	Called: November 20, 1930 Died: July 16, 1997
Herbert Courtney Kingstone Ottawa	Called: June 19, 1941 Died: August 26, 1997
Ronald William Ianni Windsor	Called: April 19, 1963 Died: September 6, 1997
Murray John Walter Wheldrake Don Mills	Called: June 27, 1957 Died: November 27, 1997
Henry George Goodman Toronto	Called: September 17, 1931 Died: December l4, 1997
William Basil Reid Bracebridge	Called: April 19, 1963 Died: December 21, 1997
Frederick Hugh Roberts Rowell Toronto	Called: March 23, 1973 Died: December 22, 1997

C.3.3. (b) Membership in Abeyance

C.3.4. Upon their appointments to the offices shown below, the membership of the following members has been placed in abeyance under Section 31 of The Law Society Act:

John Cyrus Moore Toronto	Called: March 29, 1977 Appointed to Ontario Court (Provincial Division) December 17, 1997
William Browne Horkins North York	Called: April ll, 1980 Appointed to Ontario Court (Provincial Division) December 17, 1997

ALL OF WHICH is respectfully submitted

DATED this 27th day of February, 1998

Report of the Executive Director of Education

ADDENDUM

B.
ADMINISTRATION

B.1. READMISSION FOLLOWING RESIGNATION AT OWN REQUEST

B.1.1. The following former member applies for readmission and has met all the requirements in that regard:

Alan Philip Cooke	Called:	February 5th, 1993
	Resigned:	April 4th, 1997

B.2. MEMBERSHIP UNDER RULE 50

(a) Termination of Rule 50

The following member wishes to terminate her retirement under Rule 50 and has provided the Society with the necessary documentation:

Donna Jeanne McGraw Toronto	Retired:	November 29th, 1996

ALL OF WHICH is respectfully submitted

DATED this 27th day of February, 1998

THE REPORT AND ADDENDUM WERE ADOPTED

Report of the Clinic Funding Committee

Clinic Funding Committee
February 17, 1998

Report to Convocation

Nature of Report: Decision-Making

THE CLINIC FUNDING COMMITTEE met on December 11, 1997, January 12, 1998 and February 12, 1998. In attendance were:

Committee members: W.A. Derry Millar, Chair, Tamara Stomp, Vice-Chair, Pamela Mountenay-Cain, Mark Leach, Gordon Wolfe

Joana Kuras, Clinic Funding Manager

This report contains:

- Funding decisions that require Convocation's approval

Funding Decisions

1. Summer Students

The Clinic Funding Committee has reviewed and approved allocations for summer students, pending designation of the CFC budget by the Attorney General for 1998/99, as follows:

Correctional Law Project (4 students) - $28,000

Parkdale Community Legal Services (20 students) - $139,000

Legal Assistance of Windsor (12 students) - $84,000

Kensington-Bellwoods Community Legal Services
(12 students) - $84,000

2. Pilot Projects

The Clinic Funding Committee has approved continuation of funding for the following three pilot projects, for the period April 1, 1998 to March 31, 1999, pending designation of the CFC budget by the Attorney general:

HIV/AIDS Legal Clinic (Ontario) - $100,000
Interpreter/Translator Pilot Project - $32,822
Tenant Duty Counsel - up to $47,658

3. Training

The Clinic Funding Committee has reviewed and approved applications for training funds in 1997/98, as follows:

Northern Clinic Association - $64,000
Eastern Clinic Association - $37,800
Southwest Clinic Association - $20,000
The Legal Clinic Housing Issues Committee - $13,210
The Steering Committee on Social Assistance - $10,000
The Workers' Compensation Network - $10,000
Reseau Francophone - $12,000

4. Supplementary legal disbursements

Pursuant to s.7(l)(m) of the Regulation on clinic funding, the Committee has reviewed and approved an application for supplementary legal disbursements as follows:

HIV & AIDS Legal Clinic - $3,000

5. Court Costs

Pursuant to s.11 of the Regulation on clinic funding, the Clinic Funding Committee has approved applications for the payment of court costs, as follows:

Advocacy Resource Centre for the Handicapped - $13,717
Clinique juridique Grand Nord - $750
Clinique juridique populaire de Prescott et Russell - $2,000
Downsview Community Legal Services - $200
Hamilton Mountain Legal & Community Services - $3,713
Toronto Workers' Health & Safety Legal Clinic - $2,000

ALL OF WHICH is respectfully submitted

W. Derry Millar
Chair, Clinic Funding Committee

February 17, 1998

THE REPORT WAS ADOPTED

Reports of the Finance and Audit Committee (1 Report in Camera)

Finance and Audit Committee
February 12, 1998

Report to Convocation

Purpose of Report: Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on February 12, 1998. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. DelZotto, P. Furlong, D. Murphy, T. Stomp, G. Swaye, R. Wilson, and B. Wright. Staff in attendance were J. Saso, W. Tysall, D. Carey, R. White, J. Yakimovich and S. Heipel. Also in attendance was D. Porter (Legal Aid), Michelle Strom (LPIC), and H. Willer (Arthur Andersen).

1. The Committee is reporting on the following matters:
- Ontario Legal Aid Plan - December 31, 1997 Quarterly Financial Statements (pages 4 - 14).
- 1997 Twelve Month Investment Report for the General Fund and the Lawyers Fund for Client Compensation (pages 15 - 27).

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

1. The Ontario Legal Aid Plan Financial Reports for the 9 month period ending December 31, 1997. (pages 4 - 14)

2. Investment Report for the year ended December 31, 1997. (pages 15 - 27)

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Report of the Professional Development and Competence Committee

Meeting of February 12th, 1998

Professional Development and Competence Committee
February 12, 1998

Report to Convocation

Nature of Report: Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on 12 February, 1998. In attendance were Mary Eberts (Chair), Michael Adams, Larry Banack (Vice-Chair), Susan Elliott, Helene Puccini, Heather Ross, David Scott and Rich Wilson (Vice-Chair). Staff members present were Janine Miller, Paul Truster, Sue McCaffrey, Mary Shena and Susan Binnie.

2. A joint meeting with the Professional Regulation Committee was held at 9:00 a.m. on 12 February, 1998 chaired by Eleanore Cronk, Chair of the Professional Regulation Committee. In attendance for the joint meeting, in addition to members of the Professional Development and Competence Committee, were Gary Gottlieb, Gavin MacKenzie, Shirley O'Connor, Niels Ortved, Harriet Sachs, Hope Sealy and Robert Topp, with staff members Richard Tinsley, Scott Kerr, Felecia Smith and Jim Varro.

3. The Committee is reporting on three matters:

- The discussion and a resulting motion passed at the Joint Meeting of the Professional Development and Competence Committee with the Professional Regulation Committee on the Project 200 Redesign and the Practice Review Programme (Information Item);

- Preliminary consideration of future policy issues for the Professional Development and Competence Committee in relation to professional competence and
  a) the regulatory redesign, and
  b) implementation of the proposed Legislative Reform Package
  (Information Item);

- Matters being monitored by the Committee (Information Item):
  - The ongoing review of the Law Society's Specialist Certification Program
  - Developments in Relation to Enhanced Continuing Legal Education
  - Proposal for Mandatory Mediation in Civil Cases in Ontario

I PROJECT 200 AND POLICY ISSUES ARISING FROM THE REGULATORY TEAM'S REDESIGN REPORT AS THEY RELATE TO THE LAW SOCIETY'S PRACTICE REVIEW PROGRAMME

4. The Committee met jointly with the Professional Regulation Committee for the purpose of considering a policy issue arising from the Project 200 Regulatory redesign. The joint meeting was arranged in view of the Professional Regulation Committee's responsibility for policy issues arising out of the redesign proposal and the responsibility of the Professional Development and Competence Committee for the Practice Review Programme.

5. The initial policy issue arising from the Project 200 Professional Regulation Redesign ("Prrogram") Team's Report concerned a possible change to Convocation's policy of confidentiality of information gathered during the operation of the Practice Review Programme.

6. The explanation for the proposed change of policy lay in the emphasis in the report of the Regulatory Team on remedial options and mediation in the complaints process. In the regulatory model proposed by the Team, the Practice Review Programme would become one remedial option among several. The proposal raised the issue of whether communication of information could continue to be segregated within the Practice Review Programme in the new model.

7. While the joint meeting did not address the confidentiality issue, it approved the following motion providing direction to staff working on the regulatory redesign.

> We endorse in principle a move to a more remedial approach provided that any work done to that end and any proposals emanating from it will reflect an appropriate emphasis on fairness and confidentiality as well as system efficiencies.

II PRELIMINARY CONSIDERATION OF APPROACH TO POLICY ISSUES FOR THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE ARISING OUT OF THE PROJECT 200 REDESIGN PROPOSALS AND THE POTENTIAL ENACTMENT OF THE LAW SOCIETY'S LEGISLATIVE REFORM PACKAGE

8. The Committee began discussion of whether new issues within the mandate of the Professional Development and Competence Committee could arise from the redesign associated with Project 200 and the impact of the legislative reform package when implemented.

9. The legislative package refers to "standards of competence," under s.40.1.-(1) of the draft amendments, and criteria for establishing failure "to meet standards of professional competence," under s.40.-(1). Convocation recently adopted a definition of professional competence (28 November, 1997) but the establishment and approval of standards of competence, or criteria for failure to meet such standards, remains a separate and different process.

10. The Committee asked for the following information from staff for its next meeting:

- a report on the implications of the legislative reform package for the responsibilities of the Professional Development and Competence Committee;
- information on any implementation plans in the event of approval of the Law Society's legislative reform package;
- information on any other initiatives being considered in light of the legislative reform package, in particular by the Professional Regulation Committee or by Law Society staff, where these are relevant to the responsibilities of the Professional Development and Competence Committee.

11. The Committee took note of the potential costs of implementation of the legislative reform package for future debate and discussion.

12. The Committee concluded that broader issues raised in discussion, such as the level of Law Society resources devoted to competence-related programs for members, might best be approached as part of the Bencher Retreat on Professional Development, as proposed to Convocation by Mary Eberts on 24 January, 1998.

III MATTERS BEING MONITORED BY THE COMMITTEE

i) Review of Specialist Certification Program

13. The Finance and Audit Committee is carrying out a financial review of all Law Society departments as part of the Committee's preparation for the 1999 Law Society budget. A review of the Specialist Certification Department was planned initially for January, 1998 but delayed to March 12, 1998.

14. In light of the ongoing review of the Specialist Certification Program by the Professional Development and Competence Committee, the Chair wrote to the Chair of Finance early in January, 1998 to request a postponement of the review until this Committee had completed its review of the program. Rich Wilson reported that the Chair of Finance was prepared, under the circumstances of a concurrent review in this Committee, to postpone a review by the Finance Committee until May, 1998.

ii) Enhanced Continuing Legal Education

15. Larry Banack reported on a recent symposium on Continuing Legal Education hosted by the Law Society, with generous support from the Canadian Bar Association-Ontario. The purpose of the symposium was to bring together providers of CLE in an effort to develop ideas about future directions for CLE. Convocation had approved a two-day symposium on enhanced Continuing Legal Education ("ECLE") on 28 November, 1997.

16. About forty persons attended the symposium on 31 January and 1 February, representing at least seven other organizations providing CLE as well as local law associations (through their CLE liaison persons). The two-day event consisted of speakers and panels on the first day and working groups on ideas for CLE enhancement on the second day.

17. Mr. Banack reported that reaction to the symposium by participants had been very positive and that many good ideas had emerged in the final plenary session. A full report detailing proposals developed at the symposium is attached at Appendix A. In addition a Liaison Committee, drawn largely from participants in the two-day symposium, will continue to meet to flesh out plans for the delivery of ECLE in the future. The Liaison Committee will report to Committee in May or June, 1998.

iii) Proposal for Mandatory Mediation in Civil Cases in Ontario

18. A working group of the Professional Development and Competence Committee prepared a submission to the Ontario Civil Rules Committee on the subject of mandatory mediation in November, 1997. The submission was made in response to a proposal for mandatory mediation in civil cases in Ontario as well as a draft rule of civil procedure, both of which were developed by the Ministry of the Attorney General.

19. The working group continues to monitor developments at the Civil Rules Committee and at the Ministry. The Civil Rules Committee met on 3 February to reconsider issues around mandatory mediation. The Committee's working group has met twice since December, 1997 with representatives of the Ministry of the Attorney General.

20. The working group is monitoring changes in the design for a mandatory mediation program in Ontario and also looking at issues around standards for the future selection of mediators and the conduct of mediators under a mandatory mediation program. The working group expects to report back to Committee within the next two months.

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

1. Copy of Memorandum from Mr. Paul Truster to the Members of the Professional Development and Competence Committee dated February 18, 1998 re: Report on Continuing Legal Education Brainstorming Session.
(Appendix A)

THE REPORT WAS ADOPTED

TOPP/PUCCINI MOTION

The Topp/Puccini Motion that the Legal Aid Application be deleted was withdrawn.

REPORT AND DECISION RE MOTION FOR INTERIM SUSPENSION

Re: Bernard Jacob KAMIN - Toronto

The matter was placed before Convocation.

Messrs. Scott, Marrocco and Gottlieb, Ms. Curtis, Ms. Sachs and Ms. Angeles withdrew.

Ms. Janet Brooks appeared on behalf of the Society and Mr. Paul Le Vay, Duty Counsel appeared on behalf of the solicitor.

Mr. Le Vay advised that the solicitor requested an adjournment on behalf of the solicitor. A fax sent to the Society on February 25th, 1998 from Florida was circulated to the Benchers.

Messrs. Aaron and Swaye withdrew from Convocation.

Convocation had before it the Report and Decision of the Discipline Committee on the Motion for Interim Suspension of the Solicitor dated 20th February, 1998, together with an Affidavit of Service sworn 23rd February, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 23rd February, 1998 (marked Exhibit l), together with an Affidavit of Service by Rebecca Lynne Schmidt that she personally served the solicitor with a copy of the Report on 25th February, 1998 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Bernard Jacob Kamin,
of the City of Toronto, a Barrister & Solicitor

REPORT AND DECISION OF THE DISCIPLINE
COMMITTEE ON THE MOTION FOR INTERIM
SUSPENSION OF THE SOLICITOR
Harriet Sachs, Chair
Gary Gottlieb, Q.C.
Nora Angeles

Christina Budweth
Counsel for the Law Society

No one appeared for the Solicitor

REPORT

On July 18, 1996, complaint D188/96 was issued against Bernard Jacob Kamin ("the Solicitor") alleging that he was guilty of professional misconduct. Complaint D229/97 was issued on June 26, 1997.

This Committee composed of Harriet Sachs, Chair; Gary Gottlieb, Q.C. and Nora Angeles, convened on January 27 and 29, 1998 to hear these complaints. The Solciitor did not appear although he filed an unsworn Affidavit requesting an adjournment.

The hearing proceeded and the Society called its case. On January 29, 1998, after this Committee had made its findings and indicated what its recommendation to Convocation would be in regard to penalty, but before the Committee had started its deliberations in regard to the Society's motion for an interim suspension, the Solicitor contacted the Society and was given the opportunity to address the Committee by telephone.

DECISION

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

Complaint D188/96:

2(a) He misappropriated $251,213.17 more or less, belonging to his client, Harry Whitfield, during or about the period May 27, 1995 to December l6, 1995.

Complaint D229/97:

2(a) In or about May, 1997, the Solicitor attempted to induce John Jacobelli, a witness in the discipline hearing regarding Complaint D188/96, to give false evidence in that proceeding.

The Committee recommended that the Solicitor be disbarred.

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

On January 29, 1998, the Society made before the Committee a motion requesting that it recommend to Convocation that an interim order be made suspending the Solicitor.

DECISION

The Committee recommends to Convocation that the rights and privileges of the Solicitor be suspended forthwith, to continue indefinitely, until Complaints D188/96 and D229/97 are finally resolved.

REASONS FOR DECISION

I. STATUTORY FRAMEWORK

1. Motions for interim suspension are dealt with in Rule 6 of the Rules made by Convocation under s.25.1 of the Statutory Powers Procedure Act, R.S.O. 1990, c. S22.

2. Rule 6.0l provides that where a Complaint has been served on a member, a motion may be made to the Committee for an interim order suspending the member's rights and privileges.

3. Rule 6.02 provides that the Notice of Motion shall be served on the other party at least three days before the motion is to be heard. In this case, the Notice of Motion and supporting material were served on the Solicitor on January 20, 1998. The method of service was twofold - by courier to the Solicitor's last known address, being the address a previous Commitee had indicated the Society should use to effect service on the Solicitor, and by fax to the fax number the Society had managed to obtain for the solicitor in Florida. At the time the Solicitor was residing in Florida, but had failed to provide the Society with an address or telephone number for him there.

4. Rule 6.03 provides that the evidence on the motion shall be given by Affidavit. In this case the Committee had before it two Affidavits - the Affidavit of Jonathan Batty, Discipline Counsel, and the Affidavit of Marie-Therese Boris, Counsel with the Department of Justice. Both were sworn on January 19, 1998.

5. Rule 6.06 (1) provides that where the Committee, at the conclusion of the motion, is satisfied that the protection of the public requires that an interim order of suspension be made, the Commitee shall report in writing, setting forth a summary of the evidence at the hearing and its recommendations as to the action to be taken by Convocation.

6. Rule 6.06(3) provides that the Report of the Committee shall be served upon the member no later than the day before Convocation considers the Report.

II SUMMARY OF THE EVIDENCE

7. The Committee has made findings of professional misconduct on two very serious complaints - one involving the misappropriation of $251,213.00 and the other that the Solicitor attempted to induce a witness to give false evidence in the discipline proceedings before the Society on the misappropriation complaint.

8. The Affidavit of Jonathan Batty, details the history regarding the hearing of these complaints. Suffice it to say that prior to the Complaints there were numerous adjournments, mostly at the request of the Solicitor.

9. As a condition of one of these adjournments the Solciitor entered into an undertaking not to practise on April 10, 1997. That undertaking formed part of the record before us.

10. In a letter January 6, 1998, counsel with the Ontario Regional Office of the Department of Justice, Marie-Therese Boris, advised the Society that the Solicitor had appeared as counsel in the matter of Spillman & Her Majesty the Queen, a proceeding before the Tax Court of Canada.

11. The Affidavit of Marie-Therese Boris was before us. Attached as Exhibits to that Affidavit were documents to substantiate her allegations that the Solicitor was continuing to practise law in violation of his undertaking. In particular, that documentation consisted of the following:

(a) A Notice of Appointment of Solicitor signed by Dr. Spillman indicating that he was ceasing to act in person and that he had appointed Bernard J. Kamin, Q.C. as his counsel of record. This Notice was faxed by the Solicitor to the Court on September 31, 1997.

(b) A copy of the Order of the Honourable Judge Sarchuk relating to a motion heard on September 22, 1997 at Toronto and by conference call on October 16, 1997. In that order Bernard J. Kamin, Q.C. is recorded as having appeared as Counsel for the Appellant, Dr. Spillman.

(c) The back page of a "List of Documents" prepared by the Solicitor in which he describes himself as "Bernard J. Kamin, Q.C., Barrister and Solciitor...Counsel for the Appellant". That document was served on October 16, 1997.

12. The Solicitor's position, as presented to the Committee, both in an unsworn Affidavit and in his submissions over the telephone were that he never acted as counsel for Dr. Spillman. Rather, Dr. Spillman was a friend of thirty years whom he was helping out and for whom he was acting as an agent.

13. On the basis of the evidence before us this Committee had no difficulty in concluding that the Solicitor was not appearing as agent, but rather represented himself to the Court concerned as being Dr. Spillman's counsel. In doing so he was practising law in violation of his undertaking.

14. Given the serious nature of the findings of professional misconduct that this Committee has made against the Solicitor and given the fact that the Solicitor has not abided by his undertaking not to practise, this Committee finds that the protection of the public requires that an interim order suspending the member's rights and privileges be made until the discipline Complaints D188/96 and D229/97 are finally resolved. We so recommend to Convocation.

ALL OF WHICH is respectfully submitted

DATED this 20th day of February, 1998

Harriet Sachs, Chair

The Society's position was that the adjournment be denied and that Convocation suspend the solicitor until the discipline Complaints have been resolved.

Mr. Le Vay advised that he had not had an opportunity to discuss the matter further with the solicitor.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Banack but failed for want of a seconder that the matter be adjourned.

It was moved by Mr. Finkelstein, seconded by Ms. Ross that the adjournment be denied.

Carried

Counsel, the reporter and the public were recalled and informed that the adjournment had been denied.

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the solicitor be suspended until the discipline Complaints have been resolved.

Carried

MOTION - REPORTS TAKEN AS READ

It was moved by Mr. Ortved, seconded by Mr. Marrocco THAT the Draft Convocation Minutes for December 13th, 1997 and January 22nd and 23rd, 1998 be adopted.

Carried

Draft Minutes of Convocation - December 13th, 1997, January 22nd & 23rd, 1998

(see Draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

TREASURER'S REMARKS

The Treasurer announced on behalf of Ms. Backhouse that a Celebratory Easter/Passover dinner, funded by a member of the profession would be held on April 5th, 1998 in Convocation Hall for 250 people in need. A committee has been established composed of Ms. Backhouse, Ms. Sealy and Ms. Angeles who are asking members of the profession and judges interested in assisting to contact them.

MOTION - SUSPENSIONS

It was moved by Mr. Krishna, seconded by Mr. Ortved THAT the rights and privileges of each member who has not paid the Membership Fee, and whose name appears on the attached list, be suspended from March 2, 1998 and until their fee is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

It was moved by Mr. Krishna, seconded by Mr. Ortved THAT the rights and privileges of each member who has not paid the Errors and Omissions Insurance Levy, and whose name appears on the attached list, be suspended from March 2, 1998 and until their levy is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

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MOTION - LEGISLATIVE REFORM TRANSITION TASK FORCE

Legislative Reform Transition Task Force
February 27, 1998

Terms of Reference

BACKGROUND

1. The government has appointed legislative counsel to draft amendments to the *Law Society Act* based on the Law Society's legislative reform package.

2. In the course of his work, he has raised a number of important policy issues, including the issue of transitional provisions respecting the application of the old and new legislation.

3. The legislative reform package submitted to the government does not include transitional provisions, which would, for example, apply to discipline hearings begun under the old legislation but which may be in process when the new legislation is passed.

4. Accordingly, Convocation is requested to address the transitional and the other policy questions arising from the amendments by striking a task force of benchers.

5. There is some urgency to establishing a group to undertake this work, given that the government will be in a position imminently to determine the reform package's place on the spring (1998) legislative agenda.

TERMS OF REFERENCE

6. It is proposed that the following four benchers be appointed to the task force:

David W. Scott - chair
William D. T. Carter
Gavin MacKenzie
Frank N. Marrocco

7. The above complement would ensure that the task force includes representatives from four key standing committees (Government Relations, Professional Regulation, Professional Development and Competence, and Admissions and Equity).

8. Appropriate staff support, including a discipline counsel, would be assigned to the task force.

9. The immediate responsibilities of the task force would include:

- assessment of the impact of the amendments on current Law Society processes,
- identification of those processes which will change by virtue of the amendments,
- determination of what must be addressed in terms of transitional provisions for those processes, and
- preparation of a preliminary draft of the transitional provisions for review by legislative counsel.

10. In addition, the task force must address any of the other policy issues raised by legislative counsel to date.

11. The work identified in paragraphs 9. and 10. above must be completed before a first draft is completed by legislative counsel. The draft will then be reviewed by the task force to ensure that all features of the legislative reform package have been addressed.

12. It is proposed that the task force prepare a report on its work for March 1998 Convocation.

REQUEST FOR CONVOCATION

13. Convocation is requested to approve the terms of reference as drafted or as amended.

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It was moved by Mr. MacKenzie, seconded by Mr. Banack that a committee be established to address the transitional provisions arising from the amendments to the Law Society Act based on the Law Society's legislative reform package.

Carried

NOTICE OF MOTION

Mr. Feinstein announced that he would be bringing a Motion before Convocation in March regarding the CBAO and CDLPA merger.

Report of the Admissions and Equity Committee

Meeting of February 12th, 1998

Mr. Epstein spoke to the item dealing with the Bar Admission Course Review Working Group Discussion Paper. Mr. Epstein asked that Benchers direct their comments on the discussion paper to Mr. Treleaven or himself.

Report to Convocation

Purpose of Report: Information
Decision-Making

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions & Equity Committee ("the Committee") met on February 12, 1998. Committee members in attendance were Philip Epstein (Chair), Nancy Backhouse (Vice-Chair), William Carter (Vice-Chair), Nora Angeles, Allan Lawrence, Dean Marilyn Pilkington, and Dean Sanda Rodgers. Staff in attendance were Mimi Hart, Wendy Johnson-Martin, Ian Lebane, Kimberley Saikkonen, Sophia Sperdakos, Alan Treleaven, and Roman Woloszczuk.

2. The Committee is reporting on the following matters:

- Change of Senior Instructors in Ottawa Bar Admission Course
- Transfer Candidates - Proposed Change to Current Policy
- Amendment to *Proposals for Articling Reform*
- Bar Admission Course Review Working Group Discussion Paper

SENIOR INSTRUCTOR CIVIL LITIGATION - OTTAWA

1.. After almost 12 years as Senior Instructor of the Civil Litigation Course in Ottawa TIMOTHY D. RAY has decided to step down. Mr. Ray was called to the bar in 1972. He was certified as a Specialist in Civil Litigation in 1989 and recertified in 1994. He is a partner in the Ottawa firm of Beament Green . His practice is confined to Civil Litigation and Administrative Law. He is a Director of the Advocates' Society and of the Ontario Centre for Advocacy Training. He has been an instructor in the Civil Litigation section of the Bar Admission Course since 1975 and has been the Senior Instructor in the Ottawa BAC since 1986. In recognition of his many contributions to the community, he was nominated for the Gordon Henderson Award in 1994. His commitment and dedication to the BAC students and instructors and the Ottawa BAC staff has been truly remarkable and unwavering since he began his involvement with the BAC in 1975. All concerned, and in particular the BAC students, have benefitted immensely from his enthusiasm and passion to improve the Civil Litigation course. His intelligence, wisdom, and general good humour have been greatly appreciated. The Law Society extends many thanks to Mr. Ray for his significant contribution to legal education.

2. At this time the Law Society would like to extend welcome to J. STEPHEN CAVANAGH who is the new Senior Instructor in Ottawa for the Civil Litigation course. Mr. Cavanagh was called to the Bar in 1980. He is a partner in the law firm of Kelly, Howard, Santini. He was certified as a specialist in Civil Litigation in 1993. He has been a seminar leader in Civil Litigation since 1989. Mr. Cavanagh has been a sessional lecturer in Advocacy at the University of Ottawa since 1995. He is highly respected among his peers as an extremely competent counsel. He is fully committed to the BAC and will bring energy and insight to his role as Senior Instructor.

SENIOR INSTRUCTOR - ESTATE PLANNING AND ADMINISTRATION - OTTAWA

3. After seven years as Senior Instructor of the Estate Planning and Administration course at the Ottawa Bar Admission Course, BERNIE ROACH has decided to step down. Mr. Roach, a partner with the Ottawa firm of Scott & Aylen, has had an unremitting devotion to producing a meaningful and practical Estate Planning course for the Bar Admission Course. His involvement with the course has continued to expand to include becoming a contributing author of two chapters in the Estate Planning course as well as sitting on the Estate Planning course examination team. Mr. Roach has been a lecturer at the University of Ottawa law school in Estate Planning and is a member of the Ottawa Estate Planning Council and the Canadian Tax Foundation. His remarkable dedication will be missed by the Ottawa Bar Admission Course staff, his instructor colleagues, and Bar Admission Course students. The Law Society extends many thanks to Bernie Roach for his significant contribution to legal education.

TRANSFER CANDIDATES - PROPOSED CHANGE TO CURRENT POLICY

1. The current transfer examination policy for eligible lawyers from other Canadian provinces who seek to be licensed in Ontario provides them the option to do either a self-study approach to transfer examinations or to complete Phase Three of the Bar Admission Course in its entirety.

2. The fee for the self-study option is currently $642 for materials and the examination sitting fee, plus an application fee in the amount of $133.75. The fee for attending Phase Three was $2,625 in 1997. A candidate who elects the self study option and fails an examination and the supplemental examination in a subject must complete the section of Phase Three related to the areas failed. The fee for each section is $300 (plus GST).

3. Transfer candidates electing the self study approach prepare for examinations covering six subject areas. Those subjects are: Civil Litigation, Family Law, Estate Planning, Real Estate, Business Law, and Professional Responsibility. The Law Society makes available, for purchase by the transfer candidates, the Bar Admission Course materials related to those six subjects areas. The examinations are offered three times a year, generally in the months of January, April, and August. The examinations are (usually) 2½ hours in length, open book, and based upon the Bar Admission Course materials.

4. Transfer candidates who choose to transfer by way of enrollment in Phase Three of the Bar Admission Course commit themselves to completing it in its entirety. Transfer candidates join Bar Admission Course students to work in small groups under the guidance of the instructors. Attendance at lectures and seminars is mandatory.

5. Currently, those transfer candidates who enrol in Phase III must take the six subjects listed above as well as Criminal Procedure, Public Law, and Accounting (self-study course). They must sit examinations in all nine subjects.

6. The basis for this requirement is set out in Convocation's policy on transfer examination from November 1995, which states in the relevant section as follows:

> A candidate will continue, at any stage in the process, to be able to elect to complete Phase Three in its entirety in lieu of the transfer examination.

7. This results in unequal treatment among transfer candidates, with a more onerous examination burden placed on those who choose to take Phase III of the Bar Admission Course. There does not appear to be a sufficient policy reason for continuing this unequal treatment.

8. In addition there appears to be little reason to compel candidates to attend all six courses if, in the candidates' opinion, they need the course support in fewer than the six. It is important, however, that candidates be required to complete all the requirements in whatever section(s) they do elect to attend.

9. The Committee recommends the amendment of the relevant portion of the 1995 transfer examination policy to read as follows:

> A candidate will, at any stage in the process, be entitled to elect to complete any or all of those sections of Phase Three that correspond with the subject areas that candidates writing transfer examinations are required to complete, namely, Civil Litigation, Family Law, Estate Planning, Real Estate, Business Law, and Professional Responsibility. In the case of such election the candidate must successfully complete all the requirements of the section(s) in which the candidates enrols.

10. Currently the cost per section of Phase Three is $300 plus GST.

AMENDMENT TO SECTION OF PROPOSALS FOR ARTICLING REFORM

1. Section 14.1.2 of the *Proposals for Articling Reform* permit a waiver of the articling requirement to be granted by the Articling Director where the candidate has been admitted to the bar of another Canadian province and has practised in that province for at least one year, but less than three years.

2. The section currently reads:

> *14.1.2 Waiver of articles based on experience in another province*
> *Candidates who have been admitted to the Bar of another province and have practised in that province for at least one year, but less than three years, may be permitted a waiver of articles by the Articling Director.*

3. The restriction to less than three years was in all likelihood based on the assumption that all candidates with three or more years of experience would be adequately accommodated by the transfer regulation. That was probably so until that regulation was amended to incorporate the following section as one of the conditions for call to the bar in Ontario of lawyers from other Canadian provinces:

> *For a period or periods totalling at least 17 months within the three-year period immediately before he or she passes the transfer examination, the applicant was engaged in one of the following activities, or any combination of them:*
> *i. the active practice of law as a member of a law society or equivalent body that is a member society of the Federation of Law Societies of Canada,*
> *ii. the pre-call education program of a member society of the Federation of Law Societies of Canada*
> *iii. service under articles of clerkship in Ontario.*

4. Subsection 14.1.2 should probably have been amended when the transfer requirement was amended to remove the "but less than three years" restriction so that those affected by the new three year requirement in the transfer policy would not be excluded under both policies.

5. It is also the case that candidates entitled to a waiver of the articling requirement generally also seek exemption from Phase One of the Bar Admission Course. Phase One is designed to prepare students for articling through education in practice skills such as Advocacy, Interviewing, Legal Research, Legal Writing and Drafting, Negotiation and Professional Responsibility and Practice Management. Phase One is one month in length. It is offered immediately after law school in May and June and is attended by students prior to the commencement of the articling term. There is a strong argument that those receiving a waiver of the articling requirement should also be exempt from Phase One. On an individual basis, candidates seeking exemption are assessed on the extent to which their training and practice experience demonstrate ability in these skill areas.

6. The Committee was requested to consider whether it would be appropriate to recommend that Convocation approve an amendment to the *Proposals for Articling Reform*. The Committee has considered the proposed amendment and recommends that Convocation approve it so that the new section will read:

> 14.1.2 Waiver of articles based on experience in another province
>
> Candidates who have been admitted to the Bar of another province and have practised in that province for at least one year may be permitted a waiver of articles and an exemption from Phase One by the Articling Director.

DISCUSSION PAPER CONCERNING BAR ADMISSION REFORM

1. Attached as Appendix 1 to this report is the Draft Discussion Paper prepared by the Working Group on Bar Admission Course Review.

2. The purpose of the paper is to provide a basis for discussion of the important issues related to the licensing process. It intended to be widely circulated to the profession, law schools, law students, and other interested persons.

3. Convocation is requested to approve the paper for circulation and consultation.

Appendix 1

Bar Admission Course Review Working Group
February 17, 1998

Report to Convocation

Draft #2: Discussion Paper

Prepared by the Bar Admission Course Review Working Group
Philip Epstein, Q.C., Chair

ACKNOWLEDGMENTS

This report is the result of the work of both the 1994-95 Bar Admission Course Review Subcommittee, namely, **Philip Epstein, Q.C. (Chair), Lloyd Brennan, Q.C., Dean Donald Carter, Stephen Goudge, Q.C., Donald Lamont, Q.C., Joan Lax, Laura Legge, Q.C., Dean Marilyn Pilkington, Mohan Prabhu, Q.C., Marc Rosenberg, and Mark Austen,** and the current Bar Admission Course Review Working Group, which includes Philip Epstein, Q.C. (Chair), William Carter and Dean Donald Carter. Alan Treleaven, the Executive Director of Education, has been the advisor to both working groups. Department of Education faculty and staff have ably assisted.

Many others are making contributions to this review, and in particular the Task Force on Examination Performance, chaired by Nancy Backhouse, the Deans of the Ontario law schools and the Heads of Section and Senior Instructors of the Bar Admission Course in Toronto, London and Ottawa.

This report is the beginning of a consultation process, and certainly not the end. We thank all those who have contributed, and look forward to participation from those who would like to comment on the future of professional legal education in Ontario.

Philip M. Epstein, Q.C.
Chair, Admissions and Equity Committee
February 1998

DRAFT DISCUSSION PAPER: BAR ADMISSION COURSE REVIEW
FEBRUARY 17, 1998

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DRAFT DISCUSSION PAPER: BAR ADMISSION COURSE REVIEW

I.INTRODUCTION

In 1987, Convocation asked the former Legal Education Committee to review the Bar Admission Course, and this resulted in a 1988 report from a subcommittee of the Legal Education Committee, chaired by James M. Spence, Q.C. Convocation adopted the recommendations in the Spence Report, which resulted in the current model of the Bar Admission Course. That model has now completed seven cycles and, thus, the Admissions and Equity Committee and the education staff have had an opportunity to observe the functioning of the Bar Admission Course and have been in a position to assess its strengths and weaknesses.

It has become clear that the Spence model has not entirely met the initial expectations of either the Legal Education Committee or Convocation. Although the Spence Report contemplated a significant increase in skills training and less emphasis on substantive law, that has not occurred completely, for a variety of reasons, and the Spence model has not eliminated some of the inherent difficulties in the predecessor Bar Admission Course.

Accordingly, in December 1993, Convocation again asked the Legal Education Committee to review the Bar Admission Course, and a Bar Admission Course Review Subcommittee was assigned the task of the review. It prepared a report in April of 1995, which was approved by Convocation for the purposes of consultation with the profession, law schools, students and other interested persons. That report summarizes the strengths and weaknesses of the current course. (See Appendix A.)

That consultation process has led the Admissions and Equity Committee to conclude that, although there were many useful elements in the 1995 review proposal, the task was incomplete, and other aspects of the Bar Admission Course had to be reviewed. Contemporaneously, the Law Society was dealing with a variety of equity issues that culminated in the approval by Convocation of the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* at its bicentennial meeting in May 1997. There are significant equity issues in the Bar Admission Course to be addressed that were not addressed in the Subcommittee report in 1995. In addition, the Law Foundation of Ontario signaled its intention to cut significant funding from the Bar Admission Course. Although the Bar Admission Course has been primarily self-sustaining and has not been contributed to directly by the profession or the Society to any significant degree, this drop in funding will lead to increased expense for students if the program is to be carried on in a similar fashion. This was a further impetus for reviewing the 1995 report and re-evaluating the entire course.

A further impetus for another look at the Bar Admission Course was the decision of Convocation to investigate a mandatory continuing legal education program for the profession. The recommendations contained in the 1995 report were predicated on the assumption that the Society would mandate a program of career long learning for all lawyers and that, therefore, the Bar Admission Course would only have to concentrate on preparing lawyers for their early years at the bar. Convocation chose not to adopt a mandatory continuing education program on an immediate basis, but is engaged in carefully reviewing the alternatives and desirability of some form of program that will ensure career long learning. This has considerable impact on the Bar Admission Course.

Finally, a Task Force of Convocation engaged in the lengthy task of formulating a working definition of competence that can be used in the various aspects of the Law Society's work and, in particular, in assisting those in designing the Bar Admission Course in determining how to address competence. That work has been recently completed and has resulted in Convocation adopting a working definition of competence. (See section IV of this paper.)

Accordingly, the time is now right for Convocation and the profession to address the issues of the Bar Admission Course and to decide the format of the course for the future.

This paper is a discussion paper intended to be circulated to the profession, law schools, students and other interested persons with a view to Convocation making a final decision on the future direction of the Bar Admission Course before the end of 1998.

II. WHERE WE HAVE BEEN

The pre-Spence model Bar Admission Course teaching term lasted approximately six months. There was significant emphasis on the teaching of substantive law, along with practice and procedure. Because of the length of the course, there was some opportunity for days off, and the course was somewhat less intensive. It was taught in three centres: Toronto, Ottawa and London. Mandatory attendance was not required, except for Practice Skills. It included more subjects than are currently being taught in the present model and it exposed students to a series of lectures and seminars. The course remained largely unchanged from 1958 until the Spence model was introduced.

During that period of time, growth in the knowledge about competent professional practice, developments in knowledge about adult education, and changes in the nature of the practice of law led the Society to re-evaluate the course. For the reasons set out in the comprehensive Spence Report, it was decided that the original Bar Admission Course model had to be changed and a new approach had to be taken.

The Spence model did not, however, entirely fulfil its expectations. Mandatory attendance has not been well received by many students, and can create significant problems for many, including single parents, parents with young children, students who are located outside the teaching centres, students who have financial problems and students with disabilities. Although there was a hope that substantially more skills education could take place, it appears that in many cases students have not had the substantive base to proceed with many skills exercises as they were originally designed. Moreover, the shortening of the course has clearly made it far more intensive. There are virtually no days off and one course quickly moves into another, with examinations in between. It has dramatically increased the stress of students and contributed to a cram school atmosphere. We adopt the proposition that insufficient learning takes place in a cram school atmosphere and, although it is the view of the Section Heads, Senior Instructors and many others that students need more substantive and procedural knowledge, we are not satisfied that more substantive and procedural knowledge are being acquired by students in the current Bar Admission Course atmosphere.

III. TOWARD CHANGE

We have had an opportunity to discuss the Bar Admission Course with deans of the law schools, Heads of Section and Senior Instructors in the Bar Admission Course, students, staff and the bar. While there is widely divergent opinion about many aspects of the Bar Admission Course, there appear to be certain common threads and some agreement on some of the essential elements. The vast majority of those consulted agree that the Law Society must continue to provide a Bar Admission Course. There is also agreement that the Bar Admission Course materials produced from year to year are extremely valuable materials, and have been used by the profession for many years. They are an extremely valuable tool to practitioners. There is, however, little agreement on what should be taught in the Bar Admission Course and, in particular, how it should be taught. There appears to be considerable support for the proposition that mandatory attendance is no longer a workable arrangement and that the distance being traveled to the Bar Admission Course by many students imposes difficult and sometimes impossible burdens. We did not hear that the cost of the Bar Admission Course was prohibitive, but we did hear that for many students there are significant financial barriers to completing their qualifying education. There is concern about the examination and marking system, particularly as it impacts on some members of equality seeking groups. In particular, some students taking the Bar Admission Course in French, some Aboriginal students, and some students from Visible Minority groups have raised the issue of whether Bar Admission Course examinations discriminate systemically. These issues must be carefully explored.

IV. ROLE OF THE BAR ADMISSION COURSE

In the Spence Report, the overall objective of the Bar Admission Course is set out as follows:

> To ensure, to the extent that education can do so, that lawyers called to the Bar and admitted as solicitors in Ontario are equipped with the skills, knowledge and sense of professional responsibility and purpose that would be required to see them through the initial three years of practice in a style that would assure not only appropriate service of their clients' interests but also a steady constructive growth of their own professional character and lawyering capacity.

In order to achieve its overall objective, the Bar Admission Course redesign must go through three steps. First it must begin with an explicit definition of competent performance. Second, it must provide a program that builds upon this definition. Third, it must assess student performance in a way that will satisfy the Law Society that students who are called to the bar have achieved this articulated level of competence.

There are a variety of definitions of what constitutes a competent lawyer and, of course, the essential elements change as the practice environment itself changes. However, the nature of the educational endeavour demands that the effort be made to construct and continually refine such a definition and, as mentioned previously, developments in this regard over the last decade have made this an appropriate time to build this effort into the redesign of the Bar Admission Course. The definition of the competent lawyer, adopted by Convocation in November 1997, provides a foundation for redesign of the Bar Admission Course:

> A competent lawyer has and applies relevant skills, attributes and values in a manner appropriate to each matter undertaken on behalf of a client. These include:
>
> i. knowing general legal principles and procedures, and the substantive law and procedure for the areas of law in which the lawyer practises;
> ii. investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client as to appropriate course(s) of action;
> iii. implementing the chosen course of action through the application of appropriate skills, including:
> (a) legal research,
> (b) analysis,
> (c) application of the law to the relevant facts,
> (d) writing, and drafting,
> (e) negotiation,
> (f) alternative dispute resolution,
> (g) advocacy, and
> (h) problem solving ability
> as each matter requires;
> iv. communicating in a timely and effective manner at all stages of the matter;
> v. performing all functions conscientiously, diligently, and in a timely and cost-effective manner;
> vi. applying intellectual capacity, judgment, and deliberation to all functions;
> vii. complying in letter and in spirit with the Rules of Professional Conduct;
> viii. recognizing limitations in one's ability to handle a matter, or some aspect of it, and taking steps accordingly to ensure the client is appropriately served;
> ix. managing one's practice effectively;
> x. pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and
> xi. adapting to changing professional requirements, standards, techniques and practices.

We suggest that, for the purposes of the redesign of the Bar Admission Course, there should be a particular focus on the following elements of competence.

1. Knowledge: Entry level practitioners, who are not restricted in the areas of law that they may practise, should have an understanding of basic substantive and procedural law in a number of core areas of practice.

2. Skills: Lawyers must be able to apply their knowledge of law and procedure to the solving of client problems. Lawyers must be able to analyze legal materials, solve basic legal problems and assess the strengths and weaknesses of a variety of claims.

In addition, as one analyzes the tasks of lawyers generally, it can readily be seen that there are certain pervasive skills and functions. For example, lawyers interview, plan, advise, negotiate, mediate, write, draft, investigate, advocate, research, and manage.

A competent lawyer must have the ability to acquire new knowledge, both legal and nonlegal, and to learn new skills as they become relevant to practice. No program of legal education would be sufficient if it did not engender the capacity, openness and willingness to change and to be a career long student.

3. Professional Attitudes: Competent lawyers must be able to conduct themselves in a professionally responsible manner. This requires knowledge of existing rules of professional responsibility. It also requires an ability to recognize problems that raise ethical concerns and the ability to identify competing principles in order to resolve these problems.

There are also a number of personal characteristics or interpersonal skills that support competent practice, such as the ability to be open and nonjudgmental, to be imaginative and creative, to "get along" with others, to instill confidence, to reflect upon and learn from experience, and to supervise others.

4. Ability to Complete Transactions: Of particular importance is the ability to take the required knowledge, skills and attitudes and to integrate them in the completion of a case or file. This goes beyond simply being able to complete a number of common, recurring legal transactions. Lawyers must be able to adapt to changing circumstances, and to recognize and deal with the unique features of each case. At issue is the broader ability to conduct a practice, to identify and resolve satisfactorily the complex mix of legal and non-legal issues that clients bring to their lawyers. This includes the "lawyering know-how" that makes the practitioner effective. The ability to do a transaction is something more than just being able to combine the elements of competence and should be seen as such in redesigning the course.

The design of a teaching program that addresses the knowledge, skills and attitudes competent lawyers should possess should be guided in an overall sense by the perception of the proper role of the lawyer, an issue that relates to the Law Society's obligation to the public. For example, because the lawyer's role requires that the lawyer facilitate the smooth completion of a client's business and avoid, to the extent possible, disputes of all kinds, this invites greater emphasis upon the skills of interviewing, negotiation and mediation than it does upon the skill of advocacy.

As the Bar Admission Course is redesigned, it is expected that the work will include consideration of the lawyer's role as the Law Society has already defined it in its definition of competence and in its Rules of Professional Conduct, and identification of additional questions about role that will require resolution.

V. OTHER COMMON LAW JURISDICTIONS

We thought it useful to examine licensing qualifications in other common law jurisdictions. In particular, we took a reasonably close look at the American experience. It is instructive. Most lawyers in the United States qualify in a similar fashion. Most typically, they complete law school and then write the multi-state bar examination and state bar examination, which have both a national component and a state component. The national component consists usually of two days of examinations, the majority of which are multiple choice questions. The examinations are based principally on substantive law. The standard six subject matters covered on the examinations are usually contracts, constitutional law, criminal law, evidence, property and torts. In addition, the state bar examinations, which are often essay questions, typically deal with business relationships, conflicts of law, family law, federal income tax and estate taxation, wills and trusts. Professional responsibility, in some states, is covered by a multi-state professional responsibility examination. More than one subject may be included in a single essay question, whereas the multiple choice questions are usually focussed on one specific area of law at a time. Different states use different passing grades for determining whether a student has passed the course. For example, a passing score in Connecticut will not necessarily be the same as a passing score in New York, even though the multi-state examination content is identical.

American law students do not article. They go from law school to the bar examinations. The students are required to pass examinations in subjects that they may not have taken for two years. They are, in addition, provided with materials listing the areas of law for which they are responsible. Overwhelmingly, the students do not on their own feel properly prepared to take the state bar examination. Accordingly, they turn to private industry, which teaches cram examination preparation courses for the vast majority of the students. The courses are expensive, sometimes as much as $3,000.00, and are extremely intensive. Students are taught how to "write" the examination and how to use techniques in order to improve their chance of passing. For example, the course teaches how to make the best guess on a multiple choice question when the student is running out of time or does not know the answer.

The multi-state bar examinations are heavily focussed on substantive law, and in many respects they test what the student already learned in law school. Because of the significant absence of procedure, a student graduating from an American law school, not articling and then taking the multi-state bar examination is ill-equipped by this process to open a law office. For those students who go into firms where they are trained, the problem is less acute. But for those who team up with other inexperienced graduates or open their own firms, the risk to the public is high if the lawyer has had little opportunity to deal with practice issues.

We are convinced that the American system has very little to offer in terms of a licensing qualification system. It meets none of our objectives of a Bar Admission Course, and is pedagogically unsound. A very significant argument can be made that it does not meet the test for competence. It does determine who are the top achievers on that type of examination and it does tell the public that the successful graduates have passed a form of rigorous testing, but not much more. Critical thinkers in America who have dealt with legal education have indicated that the Canadian experience is a far better one and one that is better suited to addressing competence.[1]

The Law Society in New South Wales, Australia tried a novel classroom-only concept for a relatively short period of time. The program placed students in mock law firms where students carried out a series of legal exercises, including real estate transactions, litigation, business transactions, family law and running an office. The teaching premises included extensive video facilities, a bank, a registry office and a court. There was much to recommend in this system. Unfortunately, it was prohibitively expensive and when the costs began to rise to match the necessary expenditures of running such a program, it was significantly shortened. A modified form of articling has been reintroduced. Although there is much to admire in such a system, the numbers of students in Ontario make such an approach practically impossible.

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[1] *Legal Education and Professional Development - An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992.* (The MacCrate Report).

In England, much of competence education for solicitors is dealt with by requiring that solicitors work under supervision for a period of two years after they are called to the bar. That, too, is a somewhat attractive proposition, but the consequence in England has left literally thousands of newly called solicitors unable to find a supervisory position for two years, and this has led to much unhappiness. Given the difficulty of ensuring adequate articling placements under the current articling program, it does not appear that such a plan is currently feasible in Ontario.

VI. ARTICLING

There appears to be general acceptance of articling in Ontario. In 1990, Convocation adopted a report of a Legal Education Committee subcommittee chaired by Philip Epstein, which proposed articling reform. The essential thrust of that report was to improve articling standards. It required that there be some minimal qualifications for articling principals, that there be education plans that meet certain criteria and that there be appropriate supervision and evaluation.

Like the Spence model, the articling report has not met all of its expectations. The economy went into decline in Ontario in the early nineties and this resulted in a problem in ensuring that all students could find appropriate articles. Although the Law Society never went below a figure of 98 per cent in placing articling students, there has been anecdotal evidence that some students article for no pay, article at extremely low pay or are unable to find articles at all. This led the former articling subcommittee, from time to time, to allow articling to take place in somewhat less than ideal conditions. The Admissions and Equity Committee, of late, when faced with the prospect of placing articling students where the principal is insufficiently experienced has adopted a mentoring approach, whereby the articling experience is supplemented by the student having an outside mentor.

The articling statistics seem to indicate that placements are on the rise, and we are hearing less anecdotal evidence that students are articling without pay. In any free market system there will always be some problem in placing every student, but we are satisfied that the benefits of articling dramatically outweigh any of the disadvantages. There appears to be virtually no support from the students or the bar to ending articling. There is discussion from time to time about abridgment of articles to six months, but we are satisfied that reducing the articling period would be a disincentive for articling firms to hire students because the increased turnover would likely steer them into the hiring of legal support staff instead of articling students.

The articling experience can be strengthened, and an articling working group should review current standards with a view to strengthening the articling experience. Having said that, we believe that articling should continue in Ontario. We believe it to be a very significant educational tool in preparing a lawyer for practice at the bar.

VII. COURSE PROVIDER

We are strongly of the view that The Law Society of Upper Canada must provide a Bar Admission Course itself or in conjunction with others, such as the law schools. There can be no doubt whatever that should the Law Society abandon its teaching role, the vacuum would be filled by private education providers. The private courses would be no less expensive than the Law Society course and the educational experience could be considerably less valuable. Allowing private industry to provide the Bar Admission Course could exacerbate the current problem in the Bar Admission Course and, in particular, the cram school atmosphere. It would turn the licensing examination into a test of rigour, but hardly into a test of competence. The Law Society education staff has extensive experience in running a Bar Admission Course, and over the past decade, in particular, has been able to examine carefully what works and what does not work. Qualifying students should benefit from the cumulative experience gathered by the Society, and we can find no reason to recommend abandoning the students to private industry.

There will always be some conflict in being both the course provider and the licensing organization. For example, American students are tested by state bar officials who are not responsible for teaching. Giving up the teaching of the course would, clearly, create an easier system to administer. It would allow the Law Society to reduce budget, facilities and staff. It would permit the Society to avoid having to deal with students on a daily basis and with the many conflicts that arise in any teaching program. On the other hand, we feel strongly that the students would be disadvantaged by our abandoning the teaching program. The public would not benefit and, accordingly, such a course of action would violate the Society's role statement.

VIII. EQUITY ISSUES

Leaving the teaching to private industry would exacerbate the problem that some members of equality seeking groups find in the Bar Admission Course. Those groups, in particular, could ill-afford such a supplementary course and many might be tempted to go it alone, with often negative results. In particular, because we do not believe that the professional cram schools teach much of lasting value, we see nothing to recommend them. To compound the problem, it appears likely that these professional cram school programs would be situated in major population centres, creating even more dislocation among students who wish to attend these preparatory courses.

IX. A NEW MODEL

We propose discussion of the two options for models set out at Appendix B, although we encourage discussion of other alternatives. Under the first option, the students complete law school at the end of April each year. It is proposed that they be given the month of May off for a break and for the beginning of their reading of the teaching materials. Teaching materials would be distributed to students at the law schools at the end of April, before they leave for their break. For the months of June, July and August, the students would return to their law schools for the approximately twelve-week teaching term. The Law Society would rent the facilities from the law schools and, hopefully, receive favourable rates because, in some cases, the premises are vacant. Those students wishing to take the Bar Admission Course at another centre would be free to do so. Accordingly, the Bar Admission Course would be delivered in Toronto (two sites), Ottawa, London, Kingston and Windsor.

Students often have a full-year lease even though they do not remain in the summer months, and this would allow them to stay on in premises they used while they were in law school. Students will know when they enter their first year at law school that they will not be finished their qualifying procedures until August of the third year and will be able to make arrangements accordingly. This will prevent dislocation of students and dramatically reduce problems for disadvantaged groups mentioned above. It will instil closer ties between the law school and the Law Society and will leave students in a familiar atmosphere with the intention that support groups that they had in law school would still largely be in place.

The students would complete the Bar Admission Course at the end of August and begin articling in September. They would complete their articles by the following August and would then have September off for a period of review and study. This period of review would take place with a combination of self-study, extensive materials produced by the Law Society, videotapes and the use of the Internet, including chat rooms where students could ask questions and exchange ideas and answers. This month could additionally be used by the Society for tutorial groups, particularly where the need is demonstrated.

The students would write licensing examinations for two days in October. The examinations would be graded by late October and the call to the bar could take place by November. This would advance the first call to the bar by almost three months and reduce the down time between the third year graduation and the call to the bar that now exists. This down time has been the subject of much criticism and it is a hardship for students who do not have the financial means to withstand the long period between the end of law school and the call to the bar. If the Society wished, there could be an opportunity for supplemental examinations in early December and students taking those examinations could be called to the bar in early January.

The principal variation in the second option is the timing of examinations before articling and the later commencement of articling.[2]

X. THE COURSE

The twelve-week Bar Admission Course would be devoted largely to practice, procedure and skills training. There would also be an emphasis on professional responsibility, risk management and office management. There would be an opportunity for optional courses and performance-based testing. The groups would be small enough to be able to evaluate students in performance exercises, and the program would be able to emphasize such skills as negotiating, writing, drafting, interviewing and advocacy, as well as professional responsibility, practice and procedure.

XI. NO REPEATING LAW SCHOOL COURSES

There is a wide variety of alternatives to be examined for the teaching portion of the course. For example, law schools now offer skills courses for many of the students. That is particularly so in the areas of negotiation and advocacy. Some law schools offer intensive courses such as criminal law placements, clinic placements and family law placements. There is no need, in our view, for students who have taken intensive skills courses to repeat them in a Bar Admission Course.

Students should be offered a range of courses in the Bar Admission Course that will be useful to them in their early years of practice. Some students at a very early stage in their career have decided that they wish to practise in particular fields. Some have not yet made up their mind and wish to use the articling experience as an opportunity to investigate their opportunities. Nevertheless, the Bar Admission Course can be an opportunity for some early specialized training, and students ought to be given an opportunity to work in areas in which they anticipate they might like to practise. For instance, some students may wish to concentrate on solicitor courses and others on barrister courses. All, however, would be exposed to generic and practical skills with a significant emphasis on professional responsibility and practice.[3]

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[2] The Task Force on Examination Performance favours the second option, because the first model leaves students on their own after articling and during the September self-study period, without supports from the law schools, which could remain in place if the self-study period occurred immediately after the 12-week course. The Task Force also notes that resources such as computer labs and video labs are not necessarily available in remote areas, and that, under the first option, students would be more likely to return to their homes for self-study than under the second option. There are other concerns as well about the first option, which will have to be considered carefully when this report is reviewed in the coming months.

[3] In 1987 the New York State Bar Association convened the "Special Committee on Lawyer Competency," chaired by Francis H. Musselman. The Committee Report includes recommendations to promote and improve professional competency throughout the legal profession in New York State. The Committee noted that legal education gave little or no emphasis to law office management and economics, and to such topics as time-keeping, billing, calendar control and communication with clients — the very skills that, when they are lacking, seem to account for the vast majority of client grievances. The Report is reproduced at (1988) 34 *C.L.E. Journal and Register* 31.

The object in teaching during this twelve-week period would be to provide the students with some of the basic knowledge that the student did not acquire in law school and yet will need in the early years of practice. No Bar Admission Course can, however, completely fill the gap, and it is anticipated that the Society can adopt other methods to bridge the gap between what is taught in the Bar Admission Course and what is needed in the early years at the Bar. Because the students would be assessed by performance-based exercises during the course, they would have more time and more incentive to learn the related substantive materials that accompany the course. However, because examinations would not be written immediately after the course is completed, this would remove the cram school atmosphere and create a more stimulating environment for learning. This is particularly so because students would be learning in a familiar environment in a centre where they have spent the last three years.

XII. SUBSTANTIVE LAW

What should students be taught, and what do they need to learn in order to be competent in their early years of practice? This question has no easy answer and has vexed the groups studying the Bar Admission Course over the years. There is certainly no unanimity of opinion. The educators, particularly at the law schools, emphasize that the students entering their schools, for the most part, have high academic standing and have passed rigorous entrance requirements. They are taught core courses in year one and most students opt for what the Bar would term core courses over the next two years. Clearly, some students opt for courses that would be otherwise described than as core courses, but are nevertheless exposed to legal principles and legal research.

There can be no doubt that practising lawyers today delve into areas they never studied at law school. Those practising family law, for example, who graduated before 1986, are governed by statutes that, although they affect every aspect of their practices, were not in existence at the time they went to law school. There are many who practise in fields such as environmental law, labour law or employment law but had no experience with the current subject matter of their practice either in law school or in the Bar Admission Course. There can be no doubt that one of the lawyer's acquired skills is to adapt to changing laws and changing legislation and to continue a pattern of career long learning. We believe that lawyers must and will learn additional substantive law when it is necessary to do so. We note that the definition of competence requires that lawyers not take on tasks for which they are not suited. That principle needs to be inculcated in all lawyers, and must be promoted in professional responsibility courses, both at the law school and in the Bar Admission Course. While discussion should continue between the Society and the law schools as to the required law school core courses, we believe that there has been too much emphasis on the teaching of substantive law in the Bar Admission Course, and we must move in another direction.

Nevertheless, the teaching materials will give students a significant opportunity to learn the substantive law in a wide variety of areas. These materials need to be improved and be readily accessible. They will fill the gap between any reduction of the teaching of substantive law and the students' need for more information for the practice of law.

XIII. BRIDGE THE GAP REQUIREMENT

Some American jurisdictions have set out requirements for mandatory continuing education for the first few years at the bar. These courses are frequently labeled 'bridge the gap' and are an attempt to fill in the gap between what the student learned at law school and what the newly called lawyer needs in the early years of practice. The courses are usually designed on a credit per hour basis, and the newly called lawyer is required to take a certain number of credits each year. Although obtaining the credits is mandatory, the choice, of course, typically is not. The assumption is that newly called lawyers are anxious and eager to get more practice information and will not likely attend courses for which they have no use.
Bridge the gap courses can be an important tool in developing skills and knowledge for newly called lawyers. We believe that the Society ought to study the feasibility of mandatory bridge the gap courses for at least three years after call. There is no fundamental reason why the Society ought to be the sole provider of the course, but the Society should be able to accredit the courses in order to ensure that they meet the requirements of the program.

It is not intended in this consultation paper to review the merits of a mandatory education program. Those have been canvassed to some degree in the Law Society's earlier report entitled *Post-Call Learning for Lawyers*. Nevertheless, we think that the idea of mandatory bridge the gap programs for the early years after the call to the bar is a valuable idea that ought to be pursued and discussed over the coming months.

XIV. EXAMINATIONS

We require further study of the nature of the examinations, and have not yet been able to determine the substance of the proposed examinations. As indicated above, we are not satisfied that the multi-state bar examination, which primarily tests substantive law, is the proper approach. We believe the examinations should test the ability of the student to analyze a problem and formulate an appropriate response. Accordingly, some of the performance-based testing that has been developed in the United States and is used in some states alongside the multi-state bar examination seems attractive. These tests frequently create mock statutes and mock facts that require a student to apply the facts to the law and propose solutions. This kind of analytic testing is likely a better test of a student's competence than a rigorous multiple choice examination that tests much of the same subject matter studied in law school. We do not accept the suggestion that graduation from an accredited Canadian law school alone is sufficient to allow the student to be called to the bar, but nevertheless we must take into account the fact that students have met fairly rigorous standards in both entering and graduating from the law schools. This must be taken into account in the design of our testing. There are significant equity issues in the testing, as well, and the Law Society needs time to consult and develop testing that will meet these concerns.[4]

XV. LIMITED LICENSING

The idea of a limited practice license continues to surface each time there is a meeting or a focus group to discuss the Bar Admission Course or qualifications for call to the bar. From time to time, lawyers come from other provinces or other countries who have no desire to practise anything but a very specific and narrow area of law in which they have practised elsewhere. They are sometimes of an age where passing transfer examinations or redoing the Bar Admission Course is simply too great a hurdle. We have seen that these people can stumble in the Bar Admission Course and be thereby prevented from carrying on in Ontario a practice similar to that which they may have carried on successfully, and sometimes with distinction, elsewhere.

There are also students who would prefer a limited licensing approach. It does not seem that there would be any danger to the public if a lawyer were limited to practise in a certain area, or areas, provided that the public is informed when dealing with such a lawyer that the lawyer has a limited license and that proper insurance arrangements are in place and, moreover, that there are extremely severe sanctions for practising outside one's designated area. It is said that this would be a difficult arrangement to police and that it could lead to much mischief. We are not so persuaded and, although this limited licensing idea does not directly relate to the current and proposed structure of the Bar Admission Course, it may have some impact on what is ultimately taught in the Bar Admission Course and how one is examined. Although we do not believe that the time is ripe to introduce limited licensing in Ontario and we do not believe there is a reasonable opportunity to discuss this topic between now and the end of 1998, we do recommend that the Society immediately begin to take a comprehensive look at the idea of limited licensing, both as it relates to the Bar Admission Course and to the profession.

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[4] The New York State Report (footnote 3) recommends that the bar examinations be modified to test more specifically writing and communication skills, ethics, law practice management and practical skills. The Report recommends that the newly admitted lawyer be trained and tested on at least a minimal level of competence in handling certain activities, such as 1) trial of a simple civil lawsuit, 2) handling of an uncontested divorce matter, 3) drafting of a simple will, 4) probate and administration of a simple estate, 5) trial of a traffic or summary conviction matter, 6) drafting of a mortgage or construction lien, 7) handling of a basic collection, 8) enforcing a money judgment, 9) creation of a corporation or partnership, 10) sale of a residential property, and 11) drafting of a basic contract. The Committee noted that this is not an exhaustive list.

XVI. MENTOR PROGRAMS

In the 1995 report, the Committee recommended that a mandatory mentoring program be implemented for newly called lawyers. We no longer recommend a mandatory program. We believe that a mandatory mentor program will be difficult to put into place and impossible to supervise. It may create problems in small centres and will generally not be the kind of program that can be created equally for all those involved. We do, however, believe that mentoring has a role to play in the guidance of newly called lawyers and, accordingly, we recommend the institution of a voluntary mentor program such as that created by the Canadian Bar Association - Ontario Branch. We believe the Society, the Bar Association, CDLPA, and other organizations should partner in an arrangement whereby we encourage mentoring, both for newly called lawyers and for experienced lawyers, so that they will get together, learn from one another and be a source of guidance and inspiration for those newly called to the bar. Being a mentor should be recognized by the Society as a significant contribution to the profession and the public, and the Society should consider creating mentoring aids and mentoring programs for the further advancement of this proposal.

XVII. ROLE OF LAW SCHOOLS

It is not possible to discuss a review of the Bar Admission Course without considering the role of the law schools. We did hear, from time to time, at focus groups and in discussions with the bar that there is insufficient training at law school for practice at the bar. From time to time we have heard complaints at Convocation that the law schools are not teaching the proper "things", whatever these "things" may be. The Ontario law deans take significant issue with those kinds of anecdotal statements. They report that they have all revised their courses over the past decade and they are continuing to revise courses in order to meet the needs of their students.

Naturally, there will sometimes be a tension between the law schools and the Society as to what should be taught. That tension lies in the fact that the organizations do not have identical roles. The law schools recognize that most of their students will go on to practise law, but on the other hand, they also assert that it is not their primary function to train practitioners. They recognize that there is a Bar Admission Course and continuing legal education, and that both the Bar Admission Course and continuing legal education are better suited to that role. They are training students to think and problem solve analytically and to be able to understand legal concepts. Students learn legal writing and drafting and they learn legal research. All of these are important and invaluable tools for a lawyer. Students are exposed to a significant body of substantive law, although how it is taught and what is taught varies from law school to law school. Students may take many core courses, but many may go into areas of particular interest to them, which ought to be encouraged.

We do not believe that we should create a Bar Admission Course that puts additional pressure on students to select only core law school courses, but on the other hand, students have to be told in the first year of law school what subjects will be examined in the licensing examinations and what form the examinations will take. Students must understand that, if they opt for essay or "paper" courses at university and do not have sufficient experience with rigorous examinations, they run a risk that they will not have sufficient examination writing experience by the time they come to deal with the Bar Admission Course. Because there will continue to be some substantive examination questions, we believe that by giving information to law students early, coupled with working co-operatively with the law school deans, law schools will produce students who can meet the requirements of the Bar Admission Course and the Law Society's licensing examinations.

The law deans and the Society have agreed to meet twice a year in order to continue to collaborate more effectively to enhance the continuum in legal education, and we have every confidence that while the two organizations may have different goals, they can enhance their work together for the general benefit of the public and their students.

During the course of the review of the first draft report, it was recommended by Dean Marilyn Pilkington and Dean Sanda Rodgers that the Law Society and the law schools take a co-operative look at the courses being taught at the law schools. It has been suggested that the Heads of Section, Senior Instructors and other interested parties meet with the teachers of the core subjects at the law schools to co-operatively discuss the curriculum. The Law Society could explain to the law schools what the needs and expectations are for those being called to the bar. The law schools could explain their current curricula, and the Law Society would be in a better position to design materials to fill any gaps. The law schools and the Law Society could co-operate in understanding each other's role and function, and we believe both entities would benefit from an open exchange of curricula ideas. It has taken the law schools and the Law Society a long time to overcome the differences that arose when the Law Society and the law schools went in different directions in terms of qualifying students for a law degree. It is time to put some of that history behind us and move forward in a more co-operative fashion. The law schools have signalled their intention to work more closely with the Law Society in a co-operative fashion, and the Law Society should take full advantage of that gesture. That is not so say that the Law Society should direct what should be taught in the law schools. The law schools should continue to do what they do best. We believe that this kind of co-operation will be of significant benefit in the redesign of the Bar Admission Course.

XVIII. BUDGET ISSUES

The budget and funding of the Bar Admission Course are of concern, particularly given Law Foundation cuts. It has been said that it would be difficult to lower the cost of offering the Bar Admission Course as long as there is a significant teaching requirement. This is so even if the Law Society were to hold a significant part of the Bar Admission Course teaching term in the law schools. The budget issues were reviewed in the 1995 report and very little has changed except for increasing cost pressures.

We must, following consultation and more detailed development of a proposed model, review rigorously the budgetary requirements for the new program before developing a detailed draft budget. We believe that the new teaching program should be less expensive than the current program, although the initial start-up costs, and particularly the examination design costs, would likely be significant. However, we believe that the ultimate costs to the student would be less because of the hidden savings in costs that result from less dislocation and likely lower cost facilities. In any event, we are committed to a Bar Admission Course that controls costs effectively.

XIX. STUDENT FINANCIAL ASSISTANCE

The Bar Admission Course has been traditionally self-funding through tuition and the Law Foundation grants. In addition, the Bar Admission Course pays a significant amount of the administrative costs of the Law Society for use of the Society's premises and services. We believe the public and the bar ultimately benefit from a properly designed Bar Admission Course and a proper method of qualifying students for call to the bar. We believe the Society and its members have some obligation to contribute some funds to the running of the course and some funds for financial aid. Student loans can be insufficient to meet the needs of many desperately poor students who are trying to complete many long years of education. The Law Society's bursary and loan program should be increased, and a levy of as little as $10.00 to $15.00 per member would create a bursary fund likely sufficient to meet the needs of all those students who need additional assistance. Although it is not proposed at this time that such a levy be introduced, it is an item worth studying, as is the Members' contribution to the overall running of the Bar Admission Course on an annual basis.

XX. RECOMMENDATIONS

The 1995 report delivered to Convocation includes recommendations, which, with some modifications, form the central recommendations in this report.

Recommendation 1: It is recommended that the Law Society affirm its continuing obligation, enunciated in the Law Society Role Statement, to ensure that newly called lawyers attain a level of competence required to serve the public effectively.

Recommendation 2: It is recommended that the Law Society and the six Ontario law schools collaborate more effectively to enhance the continuum in legal education, and that to this end the Law Society and the law schools work together to develop and strengthen an ongoing effective partnership in legal education.

Recommendation 3: It is recommended that the Bar Admission Course continue teaching and testing professional responsibility, practice management and loss prevention.

Recommendation 4: It is recommended that the Bar Admission Course continue teaching and testing lawyering skills.

Recommendation 5: It is recommended that the Bar Admission Course continue teaching and testing the "how-to" of lawyering practice, and in particular that it do so through a transactional approach to education.

Recommendation 6: It is recommended that students be required to pass licensing examinations, skills assessments, and other tests of their entry-level lawyering competence, including basic knowledge of substantive law and procedure in core subjects. Although the Bar Admission Course should not focus on teaching substantive law and procedure in the classroom, the teaching and testing program must be designed to avoid impacting negatively on equality seeking groups.

Recommendation 7: It is recommended that the articling program be continued, as an important practical component in legal education, and that further initiatives be developed to enhance articling.

Recommendation 8: It is recommended that a voluntary mentoring program be implemented for newly called lawyers.

Recommendation 9: It is recommended that a co-ordinated curriculum of continuing legal education courses be implemented to permit newly called lawyers to meet their particular needs, enhance their competence, and adapt to the rapidly changing practice of law. There should be further investigation of a bridge the gap continuing legal education requirement for newly called lawyers.

Recommendation 10: It is recommended that the Law Society design and implement a new model of Bar Admission Course, such as the one outlined in Appendix B, to be delivered in the law schools by the Law Society. Attendance would be strongly encouraged but not mandated.

Recommendation 11: It is recommended that the Law Society investigate the potential for limited licensing in the Bar Admission Course and for members of the profession.

Recommendation 12: It is recommended that the Law Society consider including in the members' annual fee an amount to create an enhanced student bursary program.

Recommendation 13: It is recommended that the Bar Admission Course Review Working Group carry on in its work to further develop a proposed model of Bar Admission Course and deal with a number of significant issues, including concerns of equality seeking groups.

These recommendations are intended to form the basis of further discussion and extensive consultation.

APPENDIX A

EXECUTIVE SUMMARY

BAR ADMISSION COURSE REVIEW SUBCOMMITTEE REPORT (1995)

I. INTRODUCTION

The current Course was introduced in 1990, based on the 1988 Spence Subcommittee Report. Convocation asked the Legal Education Committee to review the Course, and the Committee in turn established the Bar Admission Course Review Subcommittee, chaired by Philip Epstein.

The Subcommittee focused on effective teaching and testing for entry-level competence, changes in the profession since the Spence Report was approved, increased errors and omissions claims, and increased client complaints. While the Subcommittee is generally satisfied with the Spence model concept, the model has some drawbacks, and the Subcommittee decided to propose a revised model. The Subcommittee studied other program models, Canadian and international, in developing its proposals.

The Subcommittee is circulating the Report widely for comment.

Competence

The goal of competence is effective client service. Competence is a fundamental requirement. A lawyer must possess the requisite knowledge and skill to perform legal work, and attitudes and judgment to apply knowledge and skill.

Effective legal education flows from understanding what it is to be a competent lawyer. One important study is the 1992 American Bar Association report entitled *Legal Education and Professional Development*, the "MacCrate Report." The MacCrate Task Force identified ten lawyering skills and four professional values required for a generalist. The skills are (1) problem solving; (2) legal analysis and reasoning; (3) legal research; (4) factual investigation; (5) communication; (6) counselling; (7) negotiation; (8) litigation and alternative dispute-resolution procedures; (9) organization and management of legal work; and (10) recognition and resolution of ethical dilemmas. The values express the need for lawyers to (1) provide competent representation; (2) promote justice, fairness, and morality; (3) improve the profession; and (4) undertake professional self-development. The skills and values are divided into detailed functions that lawyers should be able to perform.

Education for Changing Times

Legal practice is constantly changing. The "shelf-life" of what is learned in the Course deteriorates rapidly. Increased emphasis on lawyering skills and methodology is essential to prepare students for flexibility and growth in a continuously changing profession.

II. RECOMMENDATIONS

Recommendation 1: That the Society affirm its obligation to ensure newly called lawyers attain a level of competence required to serve the public effectively.
The Society grants a general licence, so that overall competence is important regardless of area of practice (generalist or specialist) or type of practice (large firm, small general firm, public sector, corporate). The Society must assess student competence through rigorous licensing examinations and other testing.

Recommendation 2: That the Society and Ontario law schools collaborate more effectively to enhance the continuum in legal education, and that the Society and law schools work together to develop and strengthen an ongoing effective partnership.
The study of law has become increasingly complex. There is greater variety and specialization in careers for which students are preparing. Law schools must meet new challenges within the three year LL.B. program, which has resulted in an expanded optional curriculum. However, at consultation meetings with those who teach the Course, there was frustration with the unevenness in knowledge and skills of students entering the Course.

The Society should clearly inform students during law school of the Society's expectations of their knowledge and skills, and that those expectations are fundamental to success in the Course. The Society will rely on law school graduates being effective in legal analysis, legal research and writing, and other lawyering skills, and knowledgeable in substantive and procedural law in a range of core subjects.

The law schools and Society must collaborate fully to build a better profession through strengthening the effectiveness of the legal education continuum.

Recommendation 3: That the Course continue teaching and testing professional responsibility, practice management and loss prevention.
Lawyers must have a solid foundation in professional responsibility, practice management, and loss prevention. The Course must redouble efforts to teach and test rigorously on these topics. Enhanced loss prevention teaching is an important way to respond to increased insurance claims.

Recommendation 4: That the Course continue teaching and testing lawyering skills.
A lawyer must possess, more than knowledge, the ability to perform a variety of ever-changing functions. Competent legal service requires combined knowledge and skills.

It is important that law schools offer skills and clinical courses. However, the Society must ensure newly called lawyers have skills competence, through teaching and rigorously testing skills.

Recommendation 5: That the Course continue teaching and testing the "how-to" of lawyering practice, through a transactional approach.
A transactional approach to learning requires systematically working through hypothetical client files. Students learn in class the "how-to" of lawyering. Students would learn approaches and skills through completing one basic solicitor transaction and one basic barrister transaction. Students should then be able to apply those lessons in articling and practice.

Recommendation 6: That students must pass licensing examinations, skills assessments, and other tests of entry-level lawyering competence, including knowledge of substantive law and procedure in core subjects, but that the Course not focus on teaching substantive law and procedure.
The Course covers a number of areas of law, but may do too much superficially rather than a smaller number of essential things well. The Course should further shift from teaching substantive law and procedure to skills, transactions, and practice. Students must come to class with the requisite substantive and procedural knowledge.

The Course should continue to provide Reference Materials as Course readings, as a guide in articling, and for the licensing examinations. The Reference Materials should be modified to serve more fully as practice manuals.

The Society has an obligation to ensure newly called lawyers have the requisite knowledge of law and procedure in core areas. Licensing examinations should cover a range of core subjects. The Subcommittee continues to develop a list of examinable subjects, keeping in mind that the list must comprise the subjects most fundamental to newly called lawyers, but not be unmanageably long.

The licensing requirement extends beyond examinations. Students must be tested rigorously in lawyering skills and on the ability to complete basic transactions. Success in examinations and tests must be a pre-condition to Call to the Bar.

Recommendation 7: That articling be continued.
Students must have effective practical experience before being licensed. Although some Commonwealth jurisdictions have attempted to replace articling with classroom education, this move was rejected recently in New South Wales, which decided to return to articling on the basis that practical education cannot be achieved fully in a classroom.

Recommendation 8: That there be a mandatory mentoring program for newly called lawyers.
Newly called lawyers should be able to turn to an experienced lawyer for assistance. The mentor would provide ongoing guidance, both on an on-call and regular meeting basis. New lawyers would be paired with a mentor for two years. Associates in firms could be mentored by a senior associate or partner.

Recommendation 9: That there be a co-ordinated curriculum of continuing legal education courses for newly called lawyers.
Continuing legal education is an essential part of ongoing learning. A co-ordinated entry-level continuing legal education curriculum will allow newly called lawyers to attend programs that closely accord with their practice, and to plan their professional development. Programs would be designed to be accessible geographically and financially.

Recommendation 10: That the Society design and implement the proposed new Course model.

Recommendation 11: That the Subcommittee further refine the proposed Course model and study related issues.

III. PROPOSED NEW MODEL

The proposed teaching program, to be in the five Ontario law school cities, is eight weeks long, followed by 12 months of articling.

Teaching Term (8 weeks)

1. Professional Responsibility: (One week)
2. Practice Management and Loss Prevention: (One week)
3. Practice Skills: (Two weeks)
4. Solicitor Transaction (Two weeks): Students would choose one solicitor transaction from a list of basic solicitor practice areas. Each transaction would include the same prescribed generic features. Each transaction would focus on the "how-to" of practice, and not on substantive or procedural law.
5. Barrister Transaction (Two weeks): Students would choose one barrister transaction from a list of basic barrister practice areas. Each transaction would include the same prescribed generic features, which would complement the solicitor transaction. Each transaction would focus on the "how-to" of practice, and not on substantive or procedural law.

Articling and Licensing Examination Term (12 months)

1. Articling: (12 months)
2. Licensing Examinations: Licensing examinations would rigorously test law and procedure in core subjects. Examinations would be scheduled twice annually. Students would elect, subject to a prescribed schedule, when to complete examinations, whether after or during articling.

Call and Post-Call

1. Call to Bar: Likely in late September, after completing articling and licensing examinations.
2. Mentoring (Two years): A mandatory two-year mentoring program, with the newly called lawyer paired with an experienced lawyer.
3. Continuing Legal Education: A curriculum of entry-level programs in core practice areas, as education for law practice rather than for examinations.

IV. DISCUSSION

Choice of Subjects

The proposal relies on student ability to transfer skills taught in two chosen practice areas to other areas. Licensing examinations would cover all prescribed core subjects. Continuing legal education programs would provide education in areas of law not studied in the Course.

Examination "Cramming"

The Course tends to be too condensed. Students attend classes in one subject, study urgently, take an examination, and move to the next subject. There is little time for the reflection and absorption that skills education requires. Elimination of examinations during the teaching term would allow students to focus on professional responsibility, practice management, loss prevention, skills, and transactions.

Dislocation/Access

Students report problems with dislocation imposed by two separate teaching terms. This is especially problematic if classes are not near their law school or articling. Two ways to address this problem are eliminating the split teaching term, and locating the teaching term in the five Ontario law school cities. However, attendance should be mandatory. Skills education requires practice of the skills.

Skills vs. Substantive Law

Skills and transactions are under-emphasized in Phase Three. It is difficult to focus on skills when students are primarily assessed by examinations. Students have wanted classroom time spent on examination preparation rather than practice needs.

The proposal focuses on skills and transactions. Students would not write licensing examinations during the teaching term, although they would complete skills and other assessments. Students can study law and procedure in law school and on their own, and make better use of Course time to learn skills and the "how-to" of practice.

Length

The proposed Course, while shorter, would spend more time equipping students for practice. The considerable time teaching substantive and procedural law in a cram-school environment should be eliminated. Students would draw on knowledge of law and procedure from law school and from Bar Admission Course Reference Materials, and rely on reading and analysis skills to prepare for licensing examinations.

V. PROPOSED IMPLEMENTATION

1996: Spence model continues: last offering of Phase 1, penultimate offering of Phase 3.
1997: Law school graduates begin new program in May, final Phase 3 in September-December.
1998: Call to Bar for first students in new Course.

VI. BUDGET

The Bar Admission Course is funded by tuition and the Law Foundation. Annual fees of the profession do not support the Course.

Teaching skills and transactions requires small classes, many instructors, and more teaching space. The Course operates in seminar rooms with 20 students. To teach skills and transactions, there must be adequate funding and other resources. It will be difficult to lower costs meaningfully if there is a teaching program. This would be so even with the Course in five law school cities.

The Subcommittee will review budget needs. The Subcommittee hopes a new program would be less expensive than the current one, subject to research and development costs. Funding would be needed to develop and maintain enhanced examinations and skills tests.

The Subcommittee invites comments. To comment or obtain a copy of the Report, please contact:

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APPENDIX B
OPTION 1

Sept - April	May	June - August	Sept - August	September (1 year later)	October	November	January
3rd Year Law School	Holidays (materials delivered)	Bar Admission Course (situated in Law Schools)	Articling (1 year) (updated materials where necessary)	Self Study Tutorials Videos Internet -Lectures -Chat rooms	Licensing Exams: 2 Days Grading	1st Call Supplemental Exams	2nd Call

OPTION 2

Sept - April	May	June - August	September	October	November	Nov - October	December
3rd Year Law School	Holidays (materials delivered)	Bar Admission Course (situated in Law Schools)	Self Study Tutorials Videos Internet -Lectures -Chat rooms	Licensing Exams: 2 Days Grading	Supplemental Exams	Articling (1 year)	Call

Mr. Epstein advised that this matter would be brought back for consideration by June 1998.

Approval for the items dealing with Transfer Candidates-Proposed Change to Current Policy and Amendment to Proposals for Articling Reform were not reached.

The Treasurer thanked the Legal Aid Committee for the work they had done.

Mr. Epstein thanked Patricia Gyulay and her staff for the most successful and upbeat Call to the Bar ceremonies held in a long time.

Report of the Professional Regulation Committee

Meeting of February 12th, 1998

Ms. Cronk presented the item in the Report dealing with the Application of the Private Practitioner's Report.

Professional Regulation Committee
February 12, 1998

Report to Convocation

Purpose of Report: Decision-Making and Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on February 12, 1998. In attendance were:

Eleanore Cronk (Chair)

Gavin MacKenzie (Vice-Chairs)
Niels Ortved
Harriet Sachs
Robert Topp

Gary Gottlieb
Shirley O'Connor
Hope Sealy

Staff: Scott Kerr, Sue McCaffrey, Michael Seto, Felecia Smith, Richard Tinsley, Stephen Traviss, Jim Varro, Heather Werry and Jim Yakimovich

2. This report contains:

- the Committee's proposal for amendments to Rule 13 as a result of consideration of the request of the Ontario Bar Assistance Program;
- the Committee's proposal for application of the new Private Practitioner's Report;
- information reports on:
  - the Committee's guidance to staff on a pre-arranged appointment model for spot and focused audits,
  - the joint review of the Committee and the Professional Development and Competence Committee of policy issues arising from the Project 200 "PRROGRAM" Team Report, and
  - the Committee's review of the need for a disclosure policy.

AMENDMENTS TO RULE OF PROFESSIONAL CONDUCT 13

A. NATURE AND SCOPE OF THE ISSUE

3. In 1996, the Ontario Bar Assistance Program (OBAP) raised with the Society its desire to see Rule 13 of the Rules of Professional Conduct amended.

4. The amendment would reflect that lawyers assisting in programs like OBAP be required to observe strict confidentiality with respect to what they learn in the course of their counselling.

5. Currently, Rule 13 requires lawyers to report instances of professional misconduct by other lawyers to the Society. OBAP has indicated that this impacts on the ability of lawyers at OBAP to deal with issues that lawyers discuss with them.

6. While the issue was initially discussed at the Professional Development and Competence Committee[1], it was referred to the Professional Regulation Committee in June 1997, given its regulatory focus.

7. The Committee reviewed research material prepared by staff on the issue and received written materials from and an oral presentation by OBAP representatives at its November 1997 meeting.

8. Thereafter, an *ad hoc* working group of the Committee[2] was formed to assess the information and review the alternatives available to the Law Society, including whether it was now an appropriate time to amend Commentary 1 of Rule 13 to clarify the lawyer's reporting obligation.

9. Based on that review, a proposal is being made to:

- amend Rule 13, Commentary 1, and
- add a new Commentary which focuses on the issue of confidentiality as it relates to OBAP's service and how that interfaces with the Law Society's conduct reporting requirement.

B. BACKGROUND

10. In its submissions to the Committee, OBAP put the issue in the following context:

> It is crucial to the success of lawyer assistance programs that confidentiality of participants be maintained at all times. Equally important as a rule of law and as a matter of perception and confidence in lawyer assistance programs, the absolute confidentiality of participants, including lawyers, judges and law students is essential. This has been reflected by the confidentiality rules that have been enshrined in the legislation of virtually every American state as well as several Canadian provinces.
> ...
> After two years of careful, study, review, dialogue, amendment and redrafting by several Benchers, lawyers, judges, law students as well as friends and supporters in other jurisdictions, we have prepared [a] draft for a proposed rule amendment for consideration by the Benchers of the Law Society of Upper Canada.

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[1]Patricia Rogerson, former Director of the Practice Advisory Department was a director on OBAP's board and Sue McCaffrey of the Professional Standards Department is a member at large on OBAP's board. Their departmental work falls within the jurisdiction of the Professional Development and Competence Committee, and after receiving information from OBAP, they brought the matter to that committee as a competence-related issue.

[2]Gavin MacKenzie and Niels Ortved assisted by Stephen Traviss.

11. An excerpt from the materials submitted to the November 1997 Committee meeting by OBAP, which provides some historical background to the work of OBAP and the request for the confidentiality provision, appears at Appendix 1.

12. Other Canadian jurisdictions were canvassed by staff with respect to the nature of any confidentiality provisions attaching to those involved in lawyer assistance programs. The results appear in a memorandum prepared for the Committee by Stephen Traviss, Senior Counsel - Professional Conduct at Appendix 2.

13. The current Rule 13, Commentary 1 reporting requirement for lawyers is as follows:

> Unless the lawyer who tends to depart from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct which would lead to serious breaches in the future. It is, therefore, proper (unless it be privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these Rules. Where, however, there is a reasonable likelihood that someone will suffer serious damage as a consequence of an apparent breach, for example where shortage of trust funds is involved, the lawyer has an obligation to report the matter unless it is privileged or otherwise unlawful to do so. In all cases the report must be made bona fide without malice or ulterior motive.

14. OBAP's proposed amendment to Rule 13 was in the form of a new Commentary as follows:

> Persons serving in any capacity in a Lawyer Assistance Program (including, but not limited to the Ontario Bar Assistance Program/Ontario Bar Alcoholism Program, Legal Profession Assistance Conference, LINK) shall not report or disclose any knowledge or evidence or documents concerning a Lawyer/Judge/Law Student and shall keep strictly confidential all information received in the course of such activities. Nothing herein shall prevent the release of information with the written permission of the Lawyer/Judge/Law Student being assisted.

15. OBAP also proposed that the Law Society should not compel lawyers providing such assistance to testify at discipline or competency hearings. The effect of this would be that, in addition to the volunteer lawyer not reporting any serious misconduct on the part of a lawyer being helped, the volunteer could not testify about discussions with that lawyer, unless the lawyer being helped consented.

C. POLICY DISCUSSION AND ANALYSIS

The Committee's Review

16. The Committee noted with interest the approaches taken by three of the Western provinces (Alberta, Saskatchewan and Manitoba), as reflected in Mr. Traviss's memorandum.

Amendment to Commentary 1

17. With respect to existing Commentary 1, the Committee acknowledged the need to expand and specify, to a degree, the circumstances where a lawyer must report the apparent misconduct of another lawyer.

18. The following amendment, drawn by the working group, was considered by the Committee (new text appears in *bold italicized* print):

> Unless the lawyer who tends to depart from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct which would lead to serious breaches in the future. It is, therefore, proper (unless it be privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these Rules. *There are some very serious situations where a lawyer is under a duty to report. Such situations include but are not limited to the following: misappropriation or misapplication of trust monies; the abandonment of a law practice; participation in serious criminal activity related to the lawyer's practice; and the mental instability of a lawyer of such a serious nature that this lawyer's clients are likely to be severely prejudiced. If a lawyer is in any doubt as to whether a report should be made, the lawyer should consider seeking the advice of the Law Society be it directly or indirectly (e.g., through another lawyer). Nothing in this paragraph is meant to interfere with the traditional solicitor-client relationship.* In all cases the report must be made bona fide without malice or ulterior motive.

The New Commentary

19. With respect to OBAP's proposed new Commentary, the Committee acknowledged the enormous value of the work undertaken by OBAP and its volunteers. It also recognized that the requirement for disclosure of information of apparent misconduct to the Law Society can have a chilling effect on the willingness of lawyers to seek assistance from OBAP.

20. However, from the public interest perspective and that of the profession as a whole, the Committee carefully considered the impact of a complete exemption for volunteer lawyers from the reporting requirement. It was noted in particular that:

- there is no "carve out" in OBAP's proposal for situations involving imminent harm or criminal activity as a result of the lawyer's conduct;
- there are public expectations that wrongdoing on the part of a lawyer will be dealt with by the regulator;
- the Law Society, mandated to regulate in the public interest and maintain the integrity of the profession, must be appropriately informed of and is obliged to address issues of misconduct on the part of its members.

21. Against this background, the Committee considered two alternative proposals for a new Commentary.

22. Alternative #1, in the following language, essentially adopts OBAP's requested amendment:

Commentary 1A.

> Often instances of improper conduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Law Society of Upper Canada supports the Ontario Bar Assistance Program (OBAP), LINK and other support groups in their commitment to the provision of counselling on a confidential basis. Therefore, lawyers acting in the capacity of counsellors for OBAP and other support groups are not bound by the mandatory reporting requirement set out in paragraph one above, and will not be compelled to testify about conversations with a lawyer who has sought such assistance without the consent of the lawyer.

23. In Alternative #2, OBAP's proposal is amended so that there would be no requirement of a report except in cases of serious misconduct or criminal activity. This Alternative, as reflected in the following language, is essentially the "halfway house" between OBAP's proposal and the existing scheme:

Commentary 1A.

Often instances of improper conduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Law Society of Upper Canada supports the Ontario Bar Assistance Program (OBAP), LINK and other support groups in its commitment to the provision of counselling on a confidential basis. Therefore, lawyers acting in the capacity of counsellors for OBAP and other support groups will not be called by the Law Society or by any investigation committee to testify at any discipline or competency hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer/counsellor has an ethical obligation to report to the Law Society upon learning that the lawyer being assisted has engaged in or is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer's practice. The Law Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

The Committee's View and Proposals

24. With respect to existing Commentary 1, the Committee agreed with the proposed amendment to the current language of that Commentary and believes it provides greater guidance to the profession on what is expected in terms of the obligation to report apparent misconduct.

25. With respect to proposed new Commentary 1A, the consensus of the Committee was that while it could not justify a "blanket" exemption, it felt that the language in Alternative #2 above was a workable and responsible compromise between the interests the Law Society is required to protect and the need to enhance and facilitate the effectiveness of OBAP's program.

26. The Committee also proposes that:

- notice to the profession of the determination of this issue by Convocation be included in an article in the *Ontario Lawyers Gazette*, and
- efforts be undertaken by the Law Society, as appropriate, to enhance the profession's awareness of the work of OBAP and other assistance programs, through publications or other media.

27. While the Committee has proposed the amendments to Rule 13 above, it is presenting all options, including both Alternatives, for consideration and decision by Convocation.

Options and Alternatives for Decision by Convocation

28. Convocation must decide whether to:

a. accept the Committee's proposal to amend Rule 13 by
   - adopting the language of the amendments to the existing Commentary 1 as proposed in paragraph 18 above, and
   - adopting of the language of Alternative #2 as new Commentary 1A in paragraph 23 above;

b. adopt the amendments as above to existing Commentary 1 and Alternative #1 as new Commentary 1A in paragraph 22 above;

c. adopt the amendments as above to existing Commentary 1 *without* adopting either of the Alternatives as new Commentary 1A;

d. amend the amendments, as Convocation sees fit, and adopt them;

e. maintain the current Rule and not adopt any of the proposed changes;
f. refer the matter back to Committee, with direction, for further consideration.

APPLICATION OF THE PRIVATE PRACTITIONER'S REPORT

A. NATURE OF THE ISSUE

29. The Committee's direction was sought from Audit staff with respect to an issue arising from implementation of the new self-reporting regime and Convocation's adoption of the Private Practitioner's Report (PPR) in December 1997.

30. The issue is whether members currently in default of their Law Society's annual filing requirements are required to file a report of a public accountant in order to satisfy the regulatory requirement and any associated discipline process commenced against them.

31. Effectively, the question becomes whether staff, at the audit investigation or discipline stage, can accept from members in default, as compliance with the filing requirement, the new PPR, which does not require the report of a public accountant with respect to the lawyer's books and records.

B. POLICY DISCUSSION

32. The Committee noted that there were essentially four categories of members in default of filing affected by the new regime:

a. Members in default but against whom no disciplinary action, including authorization for a formal complaint, has taken place;
b. Members in default against whom formal complaints have been sworn and are either pending hearing or have proceeded to hearing;
c. Members in default against whom findings of misconduct have been made by a hearing panel and who are pending Convocation; and
d. Members whose penalties have been imposed by Convocation for failure to file and who, for example, are suspended pending a compliance filing.

Michael Seto, Audit Statutory Advisor, prepared a memorandum for the Committee's review, excerpts from which are attached at Appendix 3. The memorandum provided useful commentary on the regulatory scheme which establishes the filing requirement and factors to be considered in determining the issue. In brief:

- Neither the regulation nor the rules prescribing the form expressly stipulates that the prescribed form must be the version as at a specific point relative to the member's fiscal year;
- Within the regulatory filing obligation, it appears that the words "in the form prescribed by the rules" serve to modify the act of filing and do not appear to mandate a form relative to the fiscal period;
- Convocation prescribed and provided for the use of the new form on December 12, 1997, but it's use was not implemented until the regulatory amendments were effective on December 17. Convocation did not make any other transitional provisions, and consequently, the (only) prescribed form as of December 17, 1997 is the PPR;
- In the past, if a member wished to file a "replaced" form, the Society has not refused to accept a late filing using the prescribed form at the time the filing should have been made. It is not contemplated that the Society would now refuse to accept such a form, short of any difficulty in obtaining copies of old forms if requested by members;

- The PPR requires reporting on the same information as the former Form 3 (more recently, the Public Accountant's Report to Lawyer) and expressly provides that a member may if (s)he wishes, retain the assistance of an accountant or some other person in the preparation of the financial reporting section;
- In the event of ambiguity, fairness dictates that the member be permitted the benefit of the most favourable interpretation of the Regulation.

The Committee's View and Proposals

34. The Committee, focusing on the fairest approach to members in a scheme designed to ensure public protections, agreed that members in default of filing should be given the option to file the PPR as a matter of complying with the filing requirement.

35. Accordingly, the Committee proposes that the Society should be permitted to accept the PPR form in fulfilment of the filing requirement by lawyers currently in default of filing within any of the above-mentioned categories.

36. The Committee emphasized that acceptance of the PPR as described above is for the purposes of compliance only, and does not affect or operate to revisit any finding of professional misconduct.

37. The Committee also proposes that, as a transitional measure, members whose fiscal year ends predated December 17, 1997 (the effective date of the regulatory amendments allowing self reporting) but who are not in default, should be permitted to use the PPR and should be given the full 6 month period to file [3].

Decision for Convocation

38. Convocation must decide whether:

a. it agrees with the Committee's proposal to permit acceptance of the PPR as compliance with the filing requirement (and with the proposed transitional provision), or
b. members must file the forms in place (with an accountant's report) at the time the default in filing occurred.

PRE-ARRANGED APPOINTMENTS FOR SPOT AND FOCUSED AUDITS

39. Audit staff sought the Committee's direction with respect to whether the spot audit program should be conducted pursuant to pre-arranged appointments with lawyers, as opposed to unannounced visits.

40. The Committee, in reviewing this issue, noted that:

- a number of regulators whose responsibilities call for a facility for ensuring financial compliance make arrangements for appointments with the subjects of the financial reviews. The system of OHIP billing reviews was provided as one example; and
- the financial records of a lawyer are maintained historically, which allows for review at a time other than at a single point in time contemporaneous with the event which is to be reviewed.

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[3]For example, members whose fiscal year ended November 30, 1997 will be permitted until May 31, 1998 to file and may use the PPR.

41. James Yakimovich, Director of Audit and Investigations, provided a memorandum to the Committee, at Appendix 4, which discusses the background to the issue and suggests an approach to implementation of the program through appointments between auditors and lawyers being audited. In summary:

- On making an appointment with the lawyer, the auditor will fax the lawyer an outline listing the books and records required for the audit;
- Where a timely appointment cannot be arranged, an unannounced visit may be warranted;
- The Law Society will request that the lawyer fax a copy of the most recent trust comparison immediately to the auditor in certain situations where deferral or cancellation of the appointment by the lawyer occurs;
- Failure to provide the reconciliation, after a follow up contact, will prompt an immediate unannounced visit;
- Where the member refuses to respond to the Society's communications for purposes of arranging an appointment, an immediate unannounced visit will be made to assess the situation.

42. The Committee agreed with the approach outlined by Mr. Yakimovich, on the understanding that discretion would remain to attend unannounced at a lawyer's office, in the appropriate case(s).

43. The Committee also agreed that the pre-arranged appointment scheme should apply to both the spot and focused audit programs.

REVIEW OF POLICY ISSUES ARISING FROM THE PROJECT 200 "PRROGRAM" TEAM REPORT (JOINT MEETING OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE AND PROFESSIONAL REGULATION COMMITTEES)

A. BACKGROUND

44. The Project 200 Professional Regulation Redesign ("Prrogram") Team Report ("the Report") contains the redesign proposals for a reorganization of operational functions of the Society's regulatory departments[4], to be realized in the implementation phase of Project 200.

45. The primary focus of the Prrogram Team was to create a seamless, streamlined and fully-integrated process for dealing with the wide range of professional conduct and competence issues which fall within the Society's regulatory mandate.

46. One of the objectives of the Prrogram Team was to "ensure that the results obtained within the Society's regulatory process are an appropriate and effective response to conduct and competence problems". This directly relates to initiatives proposed in the redesign from which policy issues arise and which will require review by Convocation.

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[4]Audit & Investigations (which includes the Staff Trustee's office and the Forms Services office), Complaints (which has sub-groupings dealing with intake matters and discipline "track" investigations), Discipline, Practice Advisory Service, Professional Conduct and Professional Standards.

47. Each of the policy issues[5] are being addressed separately at Committee for eventual reports from the Committee to Convocation. The following is a preliminary information report on the review of one of the policy issues.

B. PURPOSE OF THE JOINT MEETING

48. Because the mandate of the Professional Development and Competence Committee includes responsibility for the Practice Review Program (PRP), which is the subject of one of the policy issues in the Report, a joint meeting of the Professional Regulation and the Professional Development and Competence Committees for discussion of this part of the Report was held.

Current PRP Practice

49. The focus of the PRP, administered by the Professional Standards Department, has been to enhance the competence of targeted lawyers, as measured by their success in implementing the recommendations made following a practice review, and a reduction in their incidence of complaints and/or LPIC claims.

50. Potential candidates are invited to participate on the assurance that their participation will be kept confidential and the findings of reviews will not, with the exception of mandatory reporting situations, be disclosed to or used by other regulatory departments.[6]

51. This resulted in the development of a process running parallel to and largely separate from other regulatory operations (ie. complaints, discipline, etc.) which, until the consolidation of standing committees in 1996, reported to its own committee and had its own authorization procedure.

52. While the PRP acts on referrals from other departments (particularly Complaints), the procedures it uses to identify, select, review and monitor members remain largely separate.

Impact of Redesign Proposals on Practice Review Policy and Procedure

53. The Committees were informed by the Prrogram Team Leader, Scott Kerr, that as a means of developing a more remedial approach to matters which are routinely dealt with in the Society's operations, the redesign proposals would redefine the role of the PRP by making it one of a range of alternatives available depending on the degree of response needed to address the issues at hand.

54. The proposals call for mediated solutions to most of the cases to be dealt with in a single regulatory process. An integral part of many solutions will be provisions aimed at remedying the practice problems which caused the complaint or other regulatory activity involving the member.

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[5]They include: Consolidation of advisory functions; Incorporation of preventative or remedial measures into work processes at various stages; Increased integration of the Practice Review Programme into the regulatory "mainstream" as a diversion or remedial alternative to discipline; Discipline remedial options (ie. Ethics school, pre-disposition reports); Redefining the purpose of authorization meetings; Development of a discipline default track; Appointing counsel to discipline committees; Segregation of investigative and prosecutorial functions.

[6]These provisions were established in part because the Society did not have the legislative authority to require a member's cooperation in a competency review. It was therefore reasoned that members would only participate if some assurance was given that their participation would not lead to possible disciplinary action.

55. A range of remedial solutions would be available to choose from, one of which would be Practice Review. Its comprehensive nature would likely place Practice Review at the "high end" of the range of options.

56. This proposal calls into question whether the current segregation of practice review and the information it gathers during the course of its inquiries from other regulatory operations should continue.

The Committees' View

57. After hearing from Mr. Kerr and Sue McCaffrey, Director of Professional Standards, and after considerable debate on the proposed approach to integration of the PRP into the regulatory process, the Committees agreed on and adopted the following statement:

> We endorse in principle a move to a more remedial approach provided that any work done to that end and any proposals emanating from it will reflect an appropriate emphasis on fairness and confidentiality as well as system efficiencies.

58. In keeping with this policy statement, staff will continue with its work to create the appropriate organizational and function-based structure to implement the redesign proposals.

59. Future reports on the progress of the implementation phase will be brought by staff to the Committees.

REVIEW OF THE REQUIREMENT FOR A DISCLOSURE POLICY

60. In the 1996-97 Committee year, the former Committee identified an issue for review, referred from discipline staff, concerning the development of a policy for disclosure of material in the possession of discipline counsel to a member facing disciplinary charges (or his or her counsel).

61. The issue was defined in the Committee's issues list in the following terms:

> Current disclosure policy dates back to recommendations in the Yachetti report on discipline procedures, and more recently, Crown disclosure policies. Issues have recently arisen about work product and privilege, requiring a further review of disclosure policies. While a response is currently formulated for these issues on a case by case basis, a policy would assist counsel and discipline panels.

62. In the fall of 1997, the present Committee struck a working group[7] to review the issue and determine as an initial step the necessity for a disclosure policy.

63. The working group reported its conclusions to the Committee's February 12 meeting, to the effect that at present, there was no need to develop a specific disclosure policy. The working group felt that as disclosure obligations are determined as a matter of law, the Law Society's discipline counsel should be guided by the relevant legal principles and current case law, as applicable to the Society's discipline hearing process.

64. The Committee agreed with this approach.

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[7]Gavin MacKenzie, Niels Ortved, assisted by staff Denise Ashby and Lesley Cameron.

APPENDIX 1

EXCERPT FROM WRITTEN SUBMISSIONS OF OBAP TO THE PROFESSIONAL REGULATION COMMITTEE, NOVEMBER 1997

(See excerpt in Convocation file)

APPENDIX 2

THE LAW SOCIETY OF UPPER CANADA

Professional Conduct

MEMORANDUM

TO: Jim Varro DATE: November 4, 1997

FROM: Stephen E. Traviss

RE: OBAP Proposal that lawyers participating in the program be under a strict duty not to report serious wrongdoing by a lawyer they are helping without the express consent of the lawyer being helped

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INTRODUCTION

A lawyer's duty to report is addressed in paragraph 1 of the Commentary under Rule 13. It reads:

> 1. Unless the lawyer who tends to depart from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct which would lead to serious breaches in the future. It is, therefore, proper (unless it be privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these Rules. Where, however, there is a reasonable likelihood that someone will suffer serious damage as a consequence of an apparent breach, for example where a shortage of trust funds is involved, the lawyer has an obligation to report the matter unless it is privileged or otherwise unlawful to do so. In all cases the report must be made bona fide without malice or ulterior motive.

There is little guidance with respect to the mandatory reporting of serious misconduct save the example of a lawyer who is dipping into his trust account.

CANVASS OF OTHER LAW SOCIETIES

I sent a fax to the various law societies across Canada asking three questions:

(1) Do you have in your jurisdiction a program similar to the OBAP program?

(2) If you do have such a program, has your Law Society issued any guidelines to participating lawyers with respect to the revelation of any wrongdoing they learn of?

(3) What sort of lawyer wrongdoing must be reported to the Law Society in your jurisdiction and what reporting is discretionary?

Set out below are the responses.

Alberta

(1) It has a similar program - ASSIST.

(2) A recent amendment to the Code of Conduct is set out below.

(3) Answered in (2) above.

> 4.2 Improper conduct often arises from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek help as early as possible. The Law Society supports the ASSIST Program and similar agencies in their commitment to the provision of counselling on a confidential basis. Therefore, a lawyer who is making a bona fide effort to have another lawyer seek help for such problems is not required to report to the Law Society non-criminal conduct of that lawyer that would otherwise have to be reported under Rule #4. However, the lawyer must advise the Law Society if there are reasonable grounds to believe that the other lawyer will engage in conduct that is criminal or is likely to harm any person.
>
> See Law Society Rules 31.1 and 31.2 which, respectively, exempt:
>
> (a) the Office of the Practice Advisor from reporting conduct unless it relates to the misappropriation or the likely misappropriation of funds, or to the likelihood of physical harm to any person;
>
> (b) the Office of the Equity Ombudsperson from reporting any conduct unless it relates to the misappropriation or the likely misappropriation of funds.

British Columbia

(1) It has a program similar to the OBAP program.

Since 1990, the Law Society has funded as part of its Members' Assistance Program, the Lawyers' Assistance Program (LAP). The LAP is a peer based program in which volunteer lawyers assist other lawyer throughout the province to deal with personal problems including both drug and alcohol addictions (the original focus of the program) and other kinds of personal problems (i.e. depression, suicide, other addictions). The LAP is governed by a Board and it has a full-time staff person, Mr. Derek LaCroix. About half of the volunteer lawyers are recovering alcoholics.

(2) Since its inception both the staff, the Board and the volunteers at the LAP have taken the position that the names of the lawyers that they deal with are to be kept confidential. This has been respected by the Law Society and recently confirmed in the first written contract with the LAP. There has been the unwritten expectation that participating lawyers would honour the reporting requirements in the Professional Conduct Handbook, the *Act* and Rules.

From time to time there has been some discussion between the LAP Staff, Board Members and the various Chairs of Law Society Committees with respect to LAP's desire to codify a strict duty of confidentiality and an immunity for participating lawyers within the *Legal Profession Act*. This has not taken place yet.

(3) All lawyers in British Columbia are subject to the reporting requirements set out in Chapter 13 of the Professional Conduct Handbook which reads as follows:

> Reporting Another Lawyer to the Law Society
>
> 1. Subject to Rule 2, a lawyer shall report to the Law Society:
>
> (a) another lawyer's breach of undertaking which has not been consented to or waived by the recipient of the undertaking;
>
> (b) another lawyer's shortage of trust funds, and
>
> (c) any other conduct by another lawyer which raises a substantial question as to the other lawyer's honesty or trustworthiness as a lawyer in other respects.
>
> 2. A lawyer shall not, in making a report under Rule 1, disclose any confidential information respecting the lawyer's client acquired in the course of the professional relationship or any privileged communications between them, unless the client expressly or implicitly consents.

Reporting any other breach of the Rules, *Act,* or Handbook would be discretionary.

Manitoba

(1) Manitoba does have a program similar to OBAP. In this province it is called the Lawyers Assistance Program.

(2) The Law Society of Manitoba has not issued any guidelines to participating lawyers with respect to reporting wrongdoing of which they may become aware in the course of providing assistance. The source of this information understands, however, that whereas the assisting lawyers were bound by confidentiality, it was understood that if they became aware of any serious wrongdoing, their ethical obligation to report such conduct to the Law Society would override. However, the source notes that in this most recent ad the advertisement states, "The Program runs an absolutely confidential process." The source is therefore unclear as to whether the earlier understanding would be observed.

The fact is, however, that this Program is not used very frequently, if at all, by the members, and the confidentiality issue may be at the heart of it.

(3) There is a general requirement in the Code of Professional Conduct to report the misconduct of other lawyers. In its application, however, it is understood that it is a discretionary matter and one in which a lawyer is called upon to make a professional judgment. It is Manitoba's view that any serious misconduct would impose a strong obligation on a member to report.

New Brunswick

New Brunswick (NB) does not have a similar program. The NB Branch of the CBA however is in the process of setting up a lawyer assistance program in NB. The Law Society has not become involved in setting this up because of the inherent conflict between the discipline obligation and the confidentiality required to make such a program viable. The CBA Branch has not approached the Law Society at this time to ask for some kind of immunity from prosecution for not reporting a wrongdoing to the Law Society. The Society indicated that it would not be surprised if the CBA would do so in the near future.

Newfoundland

The Law Society of Newfoundland participates in a Professional Assistance Programme operated jointly by physicians, dentists and lawyers. A significant part of the programme counselling involves alcohol-related problems, but all dealings with the programme are at arms length from the Law Society and confidential. The Society has no programme in place similar to the OBAP and, hence, the ethical concerns you raise are not raised here in the normal course of events.

Northwest Territories

(1) Our jurisdiction provides a Lawyers' Assistance Program (LAP) which is a confidential counselling service designed to assist lawyers and members of their family in dealing with a wide range of personal problems affecting health, well being and professional life including:

- Anxiety
- Depression
- Marital or Family Problems
- Alcohol or Drug Abuse
- Financial Difficulties
- Practice Problems
- Work & Career Concerns
- Stress
- Any other issues that may cause distress

The Law Society and CBA have contracted with Kelly, Luttmer & Associates Ltd. to provide the service 24 hours per day, 365 days per year, toll free. They are trained psychologists and other professionals experienced in providing confidential counselling services.

The LAP is completely confidential. The Law Society and the CBA receive only statistical information regarding the number of callers. The names of callers and particulars of their problems are not released. The LAP provides short-term counselling as well as assistance in finding the best resources available in the lawyer's community or elsewhere. Fees for initial sessions are paid by the Law Society and CBA - NWT Branch.

(2) There are no guidelines, nor does the source of information for the Law Society believe that it would consider issuing any guidelines with respect to the revelation of any wrongdoing learned during the course of this program. Guidelines to this effect would conflict with the mandate of the program. Through this program, the Law Society tries to encourage its members to identify their problems and seek appropriate help. It is understood that as part of the counselling and recovery process, that they are encouraged to self-report any wrongdoing.

(3) According to Chapter XV of the CBA Code of Professional Conduct (1987 Edition) that was adopted by the members of the Law Society of the NWT, *"It is, therefore, proper (unless it be privileged or otherwise unlawful) for a lawyer to report to a governing body any occurrences involving a breach of this Code."*.[8]

In acknowledging the difficulties likely to be experienced the program were operated through the assistance of volunteers (due to the size of the bar and the necessity to ensure utmost confidentiality), the Society opted to contract these services outside the profession.

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[8]This is similar to paragraph 1 of Commentary to our Rule 13

Although difficult to measure, the view is that the program has been very successful.

Nova Scotia

(1) The Nova Scotia Barristers' Society has a Lawyers Assistance Program ("LAP").

(2) A Confidentiality Policy with respect to the Program, endorsed by Council, is set out below.

NOVA SCOTIA BARRISTERS' SOCIETY

Lawyers Assistance Program
Confidentiality Policy

The Nova Scotia Barristers' Society and the Nova Scotia Branch of the Canadian Bar Association are concerned with the health and welfare of individual lawyers and their families. The well-being of the profession as a whole is integrally linked with the emotional health of the individual practitioner and the practitioner's family.

The following statement has been approved by both organizations:

The Nova Scotia Barristers' Society and the Nova Scotia Branch of the Canadian Bar Association recognize that alcoholism and other addictions are illnesses that can be successfully treated. Treatment is in the best interest of the member, courts, Bar, and the public.

The Nova Scotia Barristers' Society and the Nova Scotia Branch of the Canadian Bar Association recognize that in addition to alcoholism and addiction, there are problems capable of successful treatment, e.g. marital, stress, emotional distress, and financial.

The primary objective of the Lawyers Assistance Program is to provide meaningful assistance, on a wholly confidential basis, to those members and their immediate families seeking such assistance; to help them deal more effectively with those personal problems which impair the ability of the members to serve their clients and their profession.

Accordingly, the Nova Scotia Barristers' Society and the Nova Scotia Branch of the Canadian Bar Association wholeheartedly support and endorse the objectives of the Lawyers Assistance Program, and the principle of total confidentiality upon which they are based.

(3) The Barristers' Society believes that the above must be read in conjunction with the provisions of its *Legal Ethics Handbook* requiring the reporting of serious professional misconduct and that there is no absolute privilege associated with communications received by lawyer volunteers or others associated with the LAP. In the five years that the Program has existed, no reports have come forward.

Prince Edward Island

(1) PEI does not have a similar program, although there is an informal program of interested members who offer assistance in these circumstances and who are connected with the national lawyers assistance program. Efforts are being made through the CBA to start a more formal program.

(2) No guidelines exist. However, members who offer such assistance enter into a form of retainer agreement with the members they assist which they feel obliges them to keep confidential any wrongdoing they encounter. This retainer agreement has never been tested, to the Law Society's knowledge.

(3) The relevant sections of PEI's Code is identical to paragraph 1 of the Law Society of Upper Canada's Commentary to Rule 13.

Saskatchewan

(1) Lawyers Concerned For Lawyers has been in operation for approximately eleven years. The focus for its inception was to deal with alcohol problems. However, it was recognized that lawyers suffer from many stresses and therefore the program is wider than problems with alcohol.

(2), (3) Chapter XV, Commentary 6, of *The Code of Professional Conduct* added September 17, 1993 states:

> 6. Often instances of improper conduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Law Society of Saskatchewan supports Lawyers Concerned for Lawyers in its commitment to the provision of counselling on a confidential basis. Therefore, subject to the qualification below, it is not required that lawyers acting in the capacity of counsellors for Lawyers Concerned for Lawyers disclose information received in that capacity to the Discipline Committee of the Law Society, its agents, investigators or employees. Such lawyer/counsellor will not be called by the Law Society or by any investigation committee to testify at any discipline or competency hearing without the consent of the lawyer from whom the information was received.
>
> Notwithstanding the above, a lawyer/counsellor has an ethical obligation to report to the Law Society representations from a lawyer that indicate he/she may engage in future conduct which is unethical or criminal. Such conduct includes, without limitation, perjury, theft and fraud. The Law Society cannot countenance the continuation of such conduct regardless of a lawyer's attempts at rehabilitation.

No reply has been received from either the Law Society of the Yukon or from the Barreau du Quebec.

MEDICAL PROFESSION IN ONTARIO

Doctors in Ontario are now under a duty to report sexual abuse of a patient by another doctor who was or is that patient's treating physician.

Section 85.5 of the *Regulated Health Professions Act* requires doctor employers or those doctors working in partnerships who dismiss an employed doctor or disband the partnership to make a report to the Registrar of the College where the reasons include "professional misconduct, incompetence or incapacity." This broad category would include addiction to alcohol and drugs.

Section 33 of the *Public Hospitals Act* (set out below) requires an administrator to make a report to the College concerning a physician in the following circumstances:

> 33. Where,
>
> (a) the application of a physician for appointment or reappointment to a medical staff of a hospital is rejected by reason of his or her incompetence, negligence or misconduct;
>
> (b) the privileges of a member of a medical staff of a hospital are restricted or cancelled by reason of his or her incompetence, negligence or misconduct; or

(c) a physician voluntarily or involuntarily resigns from a medical staff of a hospital during the course of an investigation into his or her competence, negligence or conduct,

the administrator of such hospital shall prepare and forward a detailed report to The College of Physicians and Surgeons of Ontario. R.S.O. 1980, c. 410, s. 30.

The Ontario Medical Association's
Physical Health Program

The Ontario Medical Association ("OMA") receives calls and referrals from a number of sources including the College of Physicians and Surgeons. It operates a Help Program on a confidential basis.

Where a doctor is receiving treatment he/she will sign a contract with the OMA that provides for a report to be made to the College in the event there is a relapse and the doctor is being unco-operative. This program was developed after many years of careful consultation and preparation by the College and the OMA.

SET/em

APPENDIX 3

The Law Society of Upper Canada
Department of Audit & Investigation
Memorandum

To: Professional Regulation Committee

From: Michael Seto - Audit Statutory Advisor

Date: January 26, 1998

Subject: Application of New Self Reporting Form

General Issue:

The Committee's directions are sought with respect to the following issue and matters that flow therefrom:

> In the context of the new self-reporting regime, are members currently in default of their Law Society's annual filing requirements required to file a report of a public accountant in order to satisfy the regulatory requirement and any associated discipline process commenced against them?

Background:

Pursuant to Convocation's adoption of a new self reporting regime, a new reporting form, the Private Practitioner's Report ("PPR"), was prescribed by Convocation on December 12, 1997. The changes to Regulation 708 to permit "self reporting" were filed with the Registrar of Regulations on December 17, 1997 and thus effective as of that date.

The two most salient points of the new regime are:
(a) members need not annually retain a public accountant to complete a Law Society reporting form; and,
(b) the filing deadline was reduced from 6 months to 90 days after a member's fiscal year end.

Staff feel that, in fairness, there should be no contention that members whose fiscal year ends predated December 17, 1997 (the effective date of the regulatory amendments allowing self reporting) but who are not in default, should be permitted to use the PPR and should be given the full 6 month period to file. For example, members whose fiscal year ended November 30, 1997 will be permitted until May 31, 1998 to file and may use the PPR.

The Specific Questions:

1. Can members who are currently in default, use the PPR in order to bring themselves into compliance?

The following comments are provided to assist in the determination of the above issue.

a. S. 16 - Regulation 708

Regulation 708 clearly sets out:
(a) who has to file (as defined by members' statuses or activities); and
(b) by when a member needs to file.

Copies of the current as well as the "replaced" version of section 16 are appended for the Committee's ease of reference.

However, neither the regulation nor the rules prescribing the form expressly stipulates that the prescribed form must be the version as at a specific point relative to the member's fiscal year. Understandably, there are no provisions expressly speaking to filing requirements of members in default. It is not stated, for example, that the form is the one prescribed as at the end/start of the member's fiscal year.

The former subsection 16(2) (pre-December 17, 1997) read, in part,

> 16(2) ...shall file with the Society within 6 months from the termination of his or her fiscal year a certificate in the form prescribed by the rules...

Similarly, s.16(3)1. of the current regulation reads, in part,

> 16(3)1. ...shall submit a report to the Society within ninety days after the termination of his or her fiscal year, in the form or forms prescribed by the rules...

The subject of both phrases is the filing requirement. The obligation that is set out is the obligation for specific members to file. It appears that the words "in the form prescribed by the rules", serve to modify the act of filing; they do not appear to mandate a form relative to the fiscal period.

Consequently, it appears arguable that one uses the prescribed form at the time of the act of filing; not necessarily the form as at (for example) the end of the member's fiscal year.

b. Prescription

When Convocation prescribes forms, it can also provide for the use of the forms. This occurred when the PPR was prescribed on December 12, 1997; it's use was not implemented until the regulatory amendments were effective on December 17. Convocation did not make any other transitional provisions. Consequently, the (only) prescribed form as of December 17, 1997 is the PPR.

c. Past Practice

The forms have undergone numerous changes in the past, from substantial amendments to clarification of wording. To the recollection of staff, subsequent to those amendments (including the introduction of accountant's verification of forms 4 and 5 in 1992), the practice has been to immediately use the form current as at the time of filing. For example, a member who has been suspended and needed to file in order to be reinstated has always used the form in place at the time (s)he wishes to reinstate.

It is not contemplated that the Society would now refuse to accept such a form; however, it may now be difficult to obtain new copies of old forms if requested by members. The Annual Filings office has never kept archived versions of the various forms nor did it require members to file different forms depending on the fiscal period being reported, albeit late.

It should be noted as well that save and except independent confirmation of forms 4 and 5, the PPR requires reporting on the same information as the former form 3 (more recently, the Public Accountant's Report to Lawyer). It also expressly provides that a member may if (s)he wishes, retain the assistance of an accountant or some other person in the preparation of the financial reporting section (and calls for the identification of such person).

Consequently, the use of the PPR by default filers would not appear to constitute any change in past practice of the Law Society.

d. "Fairness"

In the event of ambiguity, fairness dictates that the member be permitted the benefit of the most favourable interpretation of the Regulation. For example, requiring members whose fiscal year ended November 30, 1997 to file within 90 days of their year ends would be contrary to the concept of fairness; these members are entitled to the benefit of the lengthier time frame (6 months).

From a cost perspective, the PPR is less onerous on the member in that (s)he need not incur the cost of retaining a public accountant. In fact, a large percentage of members in default indicate that they are unable to file due to financial hardship. These members would no longer be impeded from filing.

e. Public Protection

The entire self reporting regime (supported by the new audit processes) was presented and accepted as a measure to improve the Society's governance of the profession. Several innovations were built into the PPR that will supply better information than the old accountant's reports (for example, remittances of quarterly reconciliations).

The PPR is also supported by the spot and focused audit programs. One of the parameters proposed in defining the focused audit program is the failure of a member to file financial reporting information.

Additionally, if there are issues of concern on an individual case basis, subsection 16.1(1) of Regulation 708 empowers the Secretary, chair or a vice-chair of the Discipline Committee to require a member to file an accountant's report. Subsection 16.1(1) currently reads,

> 16.1—(1)The Secretary or the chair or a vice-chair of the Discipline Committee may, at any time and with or without cause, require any member who is required to submit a report under subsection 16(3) to submit to the Society, in addition to the report required under that subsection, a report of a public accountant relating to the matters in respect of which the member is required to submit a report to the Society under subsection 16(3).

In light of this new direction for forms filing adopted by Convocation, it is difficult to maintain, on a public protection basis, the requirement for the member to expend funds to hire an accountant.

...

f. Pragmatic/Processing Issues

If it is necessary to link an "acceptable" form to particular fiscal years, this would create a new set of processing issues for the Society. The Society would have to commence archiving and have various forms available for use. It would have to retain different review processes (both manual and computerized) to accommodate each different version of the form. It would also have to formulate rules as to when to use each form. This may be a costly process with questionable benefit.

There is the potential for considerable confusion to the members. Envision a member who has been suspended for the last three years and needs to file to reinstate. If the multiple forms approach is taken, the requirement would be for the member to file three different sets of forms (one for each fiscal year); a form 2/3, a Private Practitioner's Form/Public Accountant's Report and a PPR.

In the absence of compelling reasons (such as public protection or express regulatory provision), the question is why a more complex approach would be favoured over a simpler one.

...

Current Version of s. 16, Regulation 708

16—(1) Every member who engages in the private practice of law in Ontario shall inform the Secretary in writing of the termination date of his or her fiscal year, and shall file with the Secretary written notice of any change in the fiscal year within one month after the change is made.

(2) Every member shall submit a report to the Society, by January 31 of each year, in the form or forms prescribed by the rules, in respect of the member's practice of law in Ontario during the period of time specified in the form or forms.

(3) In addition to the report required by subsection (2), members shall submit the following reports to the Society:

1. Every member who engages in the private practice of law in Ontario, except a member described in paragraph 2 or 3, shall submit a report to the Society within ninety days after the termination of his or her fiscal year, in the form or forms prescribed by the rules, in respect of the member's private practice of law in Ontario during the fiscal year.

2. Every member who engages in the private practice of law in Ontario exclusively as an employee of a sole practitioner or law firm shall submit a report to the Society by March 31 of each year, in the form or forms prescribed by the rules, in respect of the member's private practice of law in Ontario during the previous calendar year and in respect of the member's employment with each sole practitioner or firm with which he or she was employed during the previous calendar year.

3. Every member who engages in the practice of law in Ontario exclusively as an employee of a corporation which is not a member of the Society or as an employee of an unincorporated association which is not a law firm or a member of the Society shall submit a report to the Society by March 31 of each year, in the form or forms prescribed by the rules, in respect of the member's practice of law in Ontario during the previous calendar year and in respect of the member's employment with each corporation or unincorporated association with which he or she was employed during the previous calendar year.

4. Every member who does not engage in the private practice of law in Ontario but who continues, from his or her private practice of law in Ontario in a previous year, to handle the property of clients as an estate trustee, an attorney appointed under a power of attorney or otherwise, shall submit a report to the Society by March 31 of each year, in the form or forms prescribed by the rules, in respect of each client's property which he or she handled during the previous calendar year.

16.1—(1) The Secretary or the chair or a vice-chair of the Discipline Committee may, at any time and with or without cause, require any member who is required to submit a report under subsection 16(3) to submit to the Society, in addition to the report required under that subsection, a report of a public accountant relating to the matters in respect of which the member is required to submit a report to the Society under subsection 16(3).

(2) The Secretary or the chair or vice-chair of the Discipline Committee who requires the report shall specify the matters to be included in the report and the time within which it must be submitted to the Society.

(3) For the purpose of permitting the public accountant to complete the report, the member shall,

(a) grant to the public accountant full access, without restriction, to all files maintained by the member;

(b) produce to the public accountant all evidence, vouchers, records, books and papers which the public accountant may require; and

(c) provide to the public accountant such explanations as the public accountant may require.

(4) For the purpose of permitting the public accountant to complete the report, the public accountant shall,

(a) be entitled to confirm independently the particulars of any transaction in the files; and

(b) protect any privilege attaching to the documents in the files that he or she examines.

(5) If a member fails to submit the report of a public accountant within the specified time, the Secretary or the chair or a vice-chair of the Discipline Committee may require an investigation of the member's books and accounts to be made by a person designated by him or her, who need not be a public accountant, for the purpose of obtaining the information that would have been provided in the report.

(6) Subsections (3) and (4) apply with necessary modifications to the investigation under subsection (5).

(7) The cost of preparing the report required under subsection (1), including the cost of retaining a public accountant, shall be paid for by the member.

(8) The cost of the investigation under subsection (5) shall be paid for by the member in accordance with the rules.

(9) Nothing in this section limits the authority under section 18 of the chair or a vice-chair of the Discipline Committee to require an investigation to be made of the books and accounts of any member or the right of Convocation or the Discipline Committee to institute further investigations or to require the filing of other reports. R.R.O. 1990, Reg. 708, s. 16; O. Reg. 503/97, s. 1.

"Replaced" Version of s. 16, Regulation 708

16. (1) Every member who engages in the private practice of law in Ontario shall inform the Secretary in writing of the termination date of his or her fiscal year, and shall file with the Secretary written notice of any change in the fiscal year within one month after the change is made.

(2) Every member who engages in the private practice of law in Ontario shall file with the Society within six months from the termination of his or her fiscal year a certificate in the form prescribed by the rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the rules in respect of each practice with which he or she was associated since his or her last filing.

(2.1) For the purpose of completing the report required under subsection (2), the public accountant,

(a) shall have full access, without restriction, to the files maintained by the member under section 15.2;

(b) shall be entitled to confirm independently the particulars of any transaction in the files; and

(c) shall protect any privilege attaching to the documents in the files.

(3) Subsections (1) and (2) do not apply to a member,

(a) who has not engaged in the private practice of law in Ontario since last filing under this section;

(b) who has practised exclusively as an employee of a government agency, corporation or other non-member of the Society since last filing under this section;

(c) who has practised exclusively as an employee of a sole practitioner or of a firm and who has not practised on his or her own account apart from such employment since last filing under this section,

if the member files with the Society on or before the 30th day of November in each year a certificate to that effect in the form prescribed by the rules.

(4) Subsections (1), (2) and (3) do not apply to a member who is sixty-five years of age or over and who has permanently retired.

APPENDIX 4

The Law Society of Upper Canada
Department of Audit & Investigation
Memorandum

To: Professional Regulation Committee

From: James Yakimovich - Audit Department

Date: February 3, 1998

Subject: Spot Audit Program Issues

General Issue

The Committee's directions are sought with respect to the following issues related to the spot audit program:

A) Is the Committee in favour of conducting spot audits pursuant to a pre-arranged appointment, as contrasted with an unannounced visit?

B) Where the Committee is satisfied that spot audits should be conducted by pre-arranged appointment, is it satisfied with the measures proposed which ensure that the public interest is protected prior to deferring the spot audit appointment?

Background Discussion

The spot audit program design should provide administrative practices which promote efficient deployment of the human resources associated with this program. To do so requires that efficient practices begins with the initiation of the spot audit engagement, the appointment.

Compliance audits can be conducted on the basis of an appointment or by an unannounced visit. The value associated with an unannounced audit visit is that the current state of the member's records and trust account can be assessed. A current status determination by way of an unannounced visit is important where compliance with regulatory provisions cannot be reasonably determined otherwise.

It is also an objective of the spot audit program to foster a positive professional relationship between the Society's auditor and the member who is subject to the spot audit. Spot audits are viewed as adversarial. This is because an audit is intrusive by its nature and its probing procedures with respect to transactions in the law firm's records can give rise to anxiety whether or not issues of a material nature are determined.

It is my respectful position that the Society must take measures to establish a positive auditor-lawyer relationship with the spot audit program.

The spot audit focus is on whether or not the current trust bank account balance reconciles to the client trust liability listing (detection of trust shortages) and whether or not the financial accounting of client transactions, which are historic in nature, are appropriate when measured against the nature of the legal service provided to the client. (detection of trust money misuse and compliance with regulatory record keeping requirements.)

Pre-arranged audit appointments contribute to the effectiveness of the spot audit program as it allows the member to prepare (update) the records for the audit, ie addressing minor errors, gathering together the records, etc. It is expected that during the preparation stage, any money belonging to the lawyer for earned fees will be drawn from the trust account and a repayment of any trust shortage detected will also take place, as applicable.

The opportunity to bring records up to date afforded through pre-arrangement of the audit visitation will reduce instances where the audit detects record keeping deficiencies of a minor or administrative nature. This result contributes to achieving one of the objectives of the spot audit program without direct Law Society intervention in that the member is prompted to ensure the records are current prior to the commencement of the audit. Current records will allow the auditor to focus audit efforts on matters of a substantive nature thereby fostering an environment where the audit can be completed on a timely basis.

In addition, conducting the spot audits by pre-arranged appointments will foster cooperation and will contain costs associated with repeat visits that would otherwise result where:

(1) the member is not available on an unannounced visit,
(2) some of the records are unavailable on an unannounced visit as they are in the possession of the bookkeeper,
(3) the bookkeeper is unavailable to respond to enquiries,
(4) the records are not fully up to date at the time of the unannounced visitation.

When the Society conducted spot audits in the 1980s, the factors enumerated above caused examiners to make many repeat visits because of the unannounced nature of the audit, the lawyer's inability to prepare the records, liaise with the bookkeeper etc. The costly nature of out- sourced audits serves as a heightened basis to engage cost effective methods when conducting these audits.

Where it is found that the pre-arranged appointment model is not viable after a pilot period of six (6) months, staff will advise this Committee and seek directions with regard to an alternative course of action.

A Proposed Appointment Model

1. Where it is the opinion of the Committee that the auditor should make reasonable efforts to arrange an appointment with the lawyer to conduct the spot audit, it is respectfully suggested that where a timely appointment cannot be arranged, an unannounced visit may be warranted.

2. Where the member seeks to defer the initial spot audit appointment to a date beyond more than 14 days, or where the member subsequently cancels an initial appointment and seeks an appointment beyond an additional 7 days, the public's interest should be protected with regard to the status of trust money by requesting that a copy of the most recent trust comparison be immediately faxed to the auditor.

   It is recognized that the lawyer may be unable to accommodate the spot audit appointment for proper reasons, however, those instances cannot always readily be distinguished from those in which the delay is motivated by reasons which have at their foundation problems such as trust shortages. The auditor's analysis of the trust reconciliations will be instructive to any future course of action, including an unannounced visit where trust account problems appear evident.

3. Failure to provide the reconciliation, after a follow up contact, will be viewed as supporting the belief that the records are either significantly out of date and/or that the trust account may reflect a trust shortage. The failure to provide the trust reconciliation after a follow up request will prompt an immediate unannounced visit.

4. Where the member is continuously not available to take a call for an appointment or does not return messages left on voice mail with respect to attempts to set an appointment, an immediate unannounced visit will be made to assess the situation.

5. On making an appointment with the lawyer, the auditor will fax the lawyer an outline listing the books and records required for the audit. This measure will assist the lawyer in preparing for the audit and will contribute to efficient use of the auditor's time because of the availability of the records specified.

Member Assistance and Guidance Where Inadequacies of a Minor Nature Exist

The spot audit may determine that the member has failed to meet record keeping practice standards to the highest level of expectation. Where such inadequacies of a minor nature are detected, the member will be provided with a summary listing of these inadequacies along with a proposed remedy. This measure will provide information to assist the lawyer with future record keeping practices.

It is respectfully proposed that the information data system incorporate provisions which will provide statistical information as to the extent of these inadequacies of a minor nature so that a periodic report may be provided to this committee.

.....

It was moved by Ms. Cronk, seconded by Mr. Ortved that Convocation approve the recommendation in paragraph 38a on page 12 that the Society be permitted to accept the PPR as compliance with the filing requirement and with the proposed transitional provision.

Carried

The item on Amendments to Rule 13 of the Rules of Professional Conduct was deferred to the March Convocation.

THE REPORT AS AMENDED WAS ADOPTED

Reports - Information Only

The following Reports were submitted for information only:

CEO'S Fourth Quarter Report to Convocation

October - December 1997

February 1998

General Overview of Developments, Initiatives, Results

The information contained within this report summarizes activities, initiatives and results for the Law Society's operations during the final quarter of 1997 -- October 1 to December 31. The information is not exhaustive, it is a highlight of our operational activities. Management's compliance with the executive limitations prescribed by Convocation is found at Tab 1.

A. Finance

Change of Auditors. Finance staff were directed to tender for audit services in the final quarter of the year. Tenders were received from four auditing firms and were assessed by staff and a group of benchers from the Finance and Audit Committee. After evaluating all proposals, Arthur Andersen & Co. was recommended as the Society's Auditor for the 1997 year. This recommendation was approved by Convocation.

1998 Budget. Preparation of the 1998 Budget began in July of 1997. The budget was approved by Convocation in December. Along with funding Law Society programs, the budget provides funds for ongoing services to members and to the public. Also included in the 1998 budget are funds to support various new or enhanced initiatives including: Law Society administrative restructuring; upgrading of the Society's technology and research infrastructure (aimed at assisting members in adopting the necessary skills and tools to remain competitive in the current technological environment); capital repairs to Osgoode Hall; capital preservation of the Lawyers Fund for Client Compensation; and new enhanced member audit programs. With the budget's approval, staff were able to prepare and issue the 1998 annual fee notices to all members in December.

Lawyers Fund for Client Compensation Fund Portfolio Manager. In accordance with the Society's revised Investment Policy, requests for proposals to manage the Lawyers Fund for Client Compensation portfolio were sent to four independent investment managers. Several proposals have been received and are currently being evaluated. A fund manager is expected to be chosen in the near future.

Osgoode Hall Renovations. Repairs to the east portico of the benchers' Wing continued in the final quarter of 1997. Favourable weather conditions enabled the contractor to work later than originally anticipated allowing for the completion of some additional work required on the four chimney stacks located on the roof of the Benchers' Wing. The total project is approximately 50 per cent completed and work will begin again in the spring, as the weather permits.

Outsourcing of Services. The Law Society has signed a letter of intent with Pitney Bowes Management Services to provide mailroom and printing services. Staff worked closely with Pitney Bowes to ensure a smooth turnover of operations on February 2, 1998. The outsourcing will provide us with the latest in print and mail technologies. The 12 Law Society mailroom and printing staff that will be laid off by the Society will be reemployed or redeployed to other sites by Pitney Bowes.

B. Secretariat

Complaints

Performance Data

- Files open as of October 1 2,796
- Files opened in 4th quarter 946
- Files closed in 4th quarter 751
- Files open as of December 31 2,991

- Year over year comparisons:

Date	Total Files for Year	Decrease from previous year
Dec 31, 1997	4120	-8.65%
Dec 31, 1996	4510	-7 %
Dec 31, 1995	4852	-12 %
Dec 31, 1994	5513	

Trends

The effects of Project 200, particularly the deployment of staff resources (e.g. the dedication of staff time to the Project) continued to be felt in the final quarter. Most notably, a number of staff moves has temporarily reduced the number of investigators available. Although the total number of complaints has decreased, individual file loads have increased. It is expected that this trend will moderate through the first quarter of 1998 and that file loads will level off and thereafter decrease as new staff and better methods of file assignment and investigation are put into effect as part of Project 200 initiatives.

New Initiatives

Secretariat is in the process of hiring two new Complaints Officers in order to bring the investigative staff component up to its full staffing level and relieve pressure on existing investigative resources. Staff have also been active in implementing the new complainants protocol recently passed by Convocation. All investigative staff are receiving "plain language" training to ensure correspondence is written in an easy-to-understand and user-friendly manner. As well, in compliance with the goals of Project 200, multi-disciplinary training and cross-departmental approaches are being introduced.

Audit and Investigations

Performance Data

Number of investigations in progress:
- 4th Quarter 143

Investigations completed:
- 4th Quarter 51

(Note: past, reliable statistics are not available for comparison purposes.)

Lawyer bankruptcies reported to the Office of the Staff Trustee

- 1997 97
- 1996 99

Trends

The case inventory of serious investigation matters remained relatively constant in the final quarter, and throughout 1997.

New Initiatives and Activities

In the fourth quarter, extensive energy was directed toward the development of material in support of the financial self reporting model, corresponding amendments to Regulation 708 and the development of an appropriate new member information form.

The necessary amendment to Regulation 708 was approved by the government, the self reporting form was prescribed by Convocation, and budgetary approval given to develop a new program of spot and focused audits. Extensive efforts began late in the quarter, aimed at meshing these initiatives with those of Project 200 and introducing additional audit programs.

Staffing efforts to meet program needs have been substantially completed with the addition of an auditor and contract examiner in Ottawa, an examiner in Toronto, and the return from maternity leave of another auditor.

Electronic forms filing. Members are now able to electronically file (e-file) their Member Information Forms. The appropriate technology was put in place at the end of the year so that e-filing could begin early in 1998. The new forms were sent to members already personalized with information from the Law Society's database, reducing repetitive reporting of information that is relatively static. It is expected that the new Private Practitioner Report ("self-reporting form") will be on-line and available for e-filing early in the first quarter of 1998.

Amendment to the Membership Information Form. Convocation approved changes to the Member Information Form including the incorporation of lawyer profile information. The information will be used by the Lawyers Professional Indemnity Company (LPIC), as well as the Continuing Legal Education department to better serve members.

Lawyers Fund for Client Compensation

New Claims Received:

NEW CLAIMS RECEIVED	NUMBER	CLAIM AMOUNT	CLAIM WITH LIMITS
SECOND QUARTER	60	$ 7,701,757	$ 3,197,723
THIRD QUARTER	39	$ 2,730,982	$ 1,628,373
FOURTH QUARTER	44	$ 5,247,889	$ 2,477,864

Trends

The closing of claims is expected to escalate in 1998 due to hiring of an additional contract lawyer for a one year period. In addition, the assistant secretary in charge of the Fund, will be in a position to dedicate a greater degree of his time to claims work in 1998.

Amount of Grants Paid:

GRANTS PAID	#	Amount Paid	Payout Rate (Based on the Value of Claims with the Application of Limits)
SECOND QUARTER	39	$ 1,117,314	66 %
THIRD QUARTER	30	$ 559,289	30 %
FOURTH QUARTER	47	$ 1,489,915	59 %

Status of Fund at year's end (1997):

- Number of claims open in 4th Qrt: 331 (at end of Q3 = 342)
- Gross dollar value of open claims in 4th Qrt: $36,161,000 (end of Q3 = $35.8 Mil.)
- Value of claims after application of dollar limits in 4th Qrt: $15,600,000 (end of Q3 = $ 15.64 Mil.)

Discipline

Performance Data

- Matters authorized and referred to discipline (4th qtr): 42
- Total matters authorized and referred to discipline in 1997: 409
- Matters authorized and referred to discipline in 1996: 419

The following chart summarizes the number of matters disposed of by Discipline Committees and by Discipline Convocations in the final quarter of 1997 and compares annual totals for 1996 and 1997.

DISCIPLINE DEPARTMENT STATISTICS			
	4th Quarter October 1, 1997 TO December 31, 1997	1996	1997
Number of matters/solicitors disposed of by Discipline Committees	62/63	185/180	198/190
Number of matters/solicitors disposed of by Discipline Convocations	47/29	197/116	133/91
Totals	109/92	382/296	331/281

There was one appeal heard and disposed of in the fourth quarter. John Allen Zinszer appealed Convocation's order suspending him for 3 months. The appeal was dismissed, on consent.

In total, there were 7 divisional court and court of appeal matters disposed of in 1997, as compared to 4 in 1996. The Law Society was successful in all 11 matters.

In 1997, discipline counsel performed a variety of non-prosecutorial functions. Counsel participated in many of the issues on the Professional Regulation Committee's agenda, including the development of new Rules of the Discipline Hearing Process and a policy on the involvement of complainants in the discipline hearing process. Discipline counsel were involved in the development of the proposed amendments to the *Law Society Act,* Project 200 and teaching and speaking at the Bar Admission Course. Discipline Counsel also assisted other departments with various legal issues, including dealing with third party requests for production and summonses to Law Society employees.

The department will face staff resource challenges in 1998. Three experienced discipline counsel will soon go on maternity leave. Two of these positions have been filled by contract employees and the third is expected to be filled shortly.

Practice Advisory and Professional Conduct

Performance Data	4th Quarter	1997
• Number of telephone calls	3,013	9,996
• Calls from sole practitioners	40 %	42%
• Calls from employees, partners, or associates of firms	36%	39%
• Calls from non-members	16%	19%

Trends

Members continue to seek guidance and direction about ethical, law practice management and procedural issues. Questions specifically dealing with conflicts of interest, confidentiality, solicitor-client privilege, advertising, file transfer between lawyers and the availability of legal services are of consistent concern. Our membership appears to prefer direct, personal contact with the Society's legal staff, notwithstanding the availability of written material on many topics. As Project 200 progresses, Practice Advisory anticipates the innovative and creative use of technology to reach members by more varied and efficient methods.

Professional Standards

Performance Data:

CASELOAD		
	Fourth Quarter	Annual Summary
Existing Caseload	156	164 (as at Jan 1/97)
New Files Opened	20	65
Files Closed	12	65
Total Open Files	164	164 (as at Dec 31/97)

The number of staff attendances remained constant at, on average, 40 per month, for the fourth quarter of 1997. Attendances for the month of December were slightly lower, due to the holiday season.

Trends

The case inventory remained constant over 1997, as it has since 1995. Between 1988 (the inception of the Practice Review Program) and 1995, the caseload has grown year-to-year as the department's resources expanded. The most significant growth occurred between 1992 and 1993, when the numbers of reviews increased by almost 500 per cent. This growth is attributable in part to increased awareness of the program, and in part to the department's ability to manage a higher caseload as a result of increased resources.

New Initiatives

In 1997, by making use of the complaints database, coupled with input from a staff committee, a proactive effort has been made to identify lawyers who may be developing practice problems, in order to offer them the remedial assistance of the Practice Review Program before they experience serious difficulties that may require the full weight of the disciplinary process.

C. Education

Bar Admission Course

Performance Data (call to the bar)

- No. of students called to the bar in 1997: 1,014
  (9 per cent decrease over 1996)

Performance Data (Phase I enrollment)

- No of students enrolled (1997): 1,108
- Applications received by end of 4th Qrt., 1997 for enrollment in 1998 Phase 1: 1,198
  (an increase of 7.5 per cent)

Trends

No new trend can be found in the modest changes in the number of students enrolled in Phase I of the Bar Admission Course, or in the number of students and transfer candidates being called to the Bar. The number of students graduating from Canadian law schools is consistent each year, and so the numbers of students in the Bar Admission Course do not change meaningfully.

New Initiatives

The Bar Admission Course is working with experts to provide learning and examination support for any student who encounters difficulty in successfully completing the Bar Admission Course. The initial focus will be for those students from Aboriginal and Visible Minority groups who encounter difficulties. A comprehensive program is being put in place to provide meaningful support and produce results consistent with the recommendations approved by Convocation in May 1997 in the Bicentennial Equity Report.

Issues and Challenges

Budgetary. The Law Foundation grant to the bar admission course for 1998 has been reduced by 10 per cent from the 1997 grant amount. There was significant cost cutting in 1997, leaving little room for any additional cost-cutting that would not significantly change the nature and quality of the present Bar Admission Course program. A hold-the-line, 1998 bar admission course budget was approved by Convocation, and so the shortfall in funding, created by the reduction in grants from the Law Foundation, will be made up by a modest tuition increase of approximately 5 per cent. Students who continue to be in financial need are able to obtain financial assistance through the Law Society's Financial Aid office.

Reform. The Bar Admission Course is being studied by the Admissions and Equity Committee, so that a final report, including proposals for change, can be provided to Convocation in June. The study of the Bar Admission Course involves extensive consultation, including co-ordination with the Task Force on Aboriginal and Visible Minority Examination Performance and the French Language Bar Admission Course Advisory Group.

Articling

Performance Data

Articling staff processed over 1,300 applications from members applying to serve as articling principals (lawyers who supervise students) in the 1997-1998 term.

Principals are required to file an articling education plan setting out the experience the student will receive during the articling year. The plan must describes how the placement will meet the Society's requirements of an articling position and provides a basis for evaluating the articling experience. Over 1,100 approved education plans are on file.

Financial Aid:

Student Financial Aid for Phase One. Applications for assistance under the Ontario Student Assistance Program (OSAP) were processed from approximately 230 Phase I students (representing 21 % of the class). In addition, 30 Phase One students (3% of the class) borrowed from the Society's own student loan fund to meet the costs of Phase One. The total funds issued to Phase One students by Financial Aid staff in 1997 was $236,864.

Student Financial Aid for Phase Three. Financial Aid staff processed 291 applications for assistance from the Ontario Student Assistance Program from students attending Phase Three of the Bar Admission Course in 1997 (representing 25% of the class). In addition, 35 Phase Three students
(3 % of the class) borrowed from the Society's own student loan fund to meet the costs of Phase Three.

The Law Society's Student Loan Fund. As of December 31, 1997, the Fund had approximately $236,035 outstanding in student loans to 159 students and members.

Bursary Program During Phase Three. The Bursary Committee awarded $42,037 to 78 students (163 students applied) in 1997. Awards ranged from $300 to $2,000. In 1997 funding for student bursaries was derived from a Law Society Foundation grant ($17,760) and from the Bar Admission Course budget ($22,607).

Financial Assistance to Members. The Special Committee on Relief & Assistance met on four occasions in 1997. Three applications for assistance from the LPIC Insurance Assistance Fund were considered in 1997, resulting in three awards totalling $13,763. As well, $5,100 was awarded from the Denison Trust to four students. By the end of 1997, the balance of the Denison Trust Fund stood at $342,813.94.

Placement

Performance Data

Articling. 1,122 students sought articles in Ontario in the 1997-'98 articling term. By December 31, 1997, 97.7 per cent of students had secured placement. Of the 26 students who appear to have been unsuccessful, the Law Society has confirmed that nine students continue to actively seek placement, while the remaining 17 students (1.5 per cent) have been unavailable to confirm their status. Preliminary results of the survey of students entering the bar admission course in 1998 indicate that 75 per cent had secured an articling placement by the end of 1997. This rate is consistent with placement rates in previous years when 98 to 99 per cent placement was ultimately achieved.

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

Graduate Placement. The graduate placement service lists positions suitable for recent graduates of the Bar Admission Course. It operates from the commencement of Phase Three to the following August. In 1997, 181 positions were listed with the service, of which 151 were offers of salaried employment and 30 were offers to share space or to otherwise associate. Results from the 1997 survey are still being collected, however it appears the placement rate for 1997 Bar Admission Course graduates (who will be called to the bar in 1998) will be more than 65 per cent. That compares to the 1996 number of 67 per cent and a ten year average of slightly less than 65 per cent.

Professional Placement. The professional placement service consists of the monthly publication of a bulletin containing notices of positions suitable for those with experience at the bar. The service listed 208 opportunities in 1997. The comparable figure for 1996 was 153.

Trends

Since 1991, the Law Society has consistently achieved articling student placement rates between 97 and 99 per cent, while the national unemployment rate has averaged 9 per cent and the rate of unemployment among recent university graduates has been conservatively estimated at 16 per cent. In an improving economy, it is expected that the market for articling students and recent graduates will improve.

Issues and Challenges

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

New Initiatives

The staff complement of the Articling Office was reduced in 1997 by the elimination of two senior positions. Efficiencies have been achieved by amalgamating the Articling area with the Financial Aid & Placement area to form an Articling and Student Services unit. In addition, an articling program review was commenced in conjunction with the Bencher policy review initiated by the Admissions & Equity Committee. New policies and procedures emanating from these activities could emerge in early 1998. In addition to existing efforts to make placement information accessible to students and members, we are working to offer placement information on the Society's website so that students and members seeking employment information may investigate opportunities by area of practice or geographic location and link to member sites where further information may be obtained. This service will be in place in 1998.

Continuing legal education

Performance Data (October-December 31, 1997)		(October-December 31, 1996)
No. of live programs:	48	45
No. of video replays:	29	10
No. of registrants:	6,291	5,907
Program revenue (gross)	$486,500.00	$310,932.00
Publications revenue:	$209,883.00	$79,644.00
Bursaries	50	23
Program revenue increase (over 1996)	56%	

Bursary information (Jan. -Dec. 31, 1997)		(Jan. -Dec. 31, 1996)
Applications received	302	98

Trends

Higher program revenues throughout 1997 are due in part to revived strength in the economy, which tends to have a direct relation to CLE attendance. It also reflects attendance at the two major real estate programs undertaken in partnership with the CBAO and CDLPA this year, namely, Title Insurance (May 6) and Electronic Registration (November 10).

The "Six-Minute@ series continues to be popular and has attracted favourable attention from the legal press; it is consistent with several indicators showing increased interest in concise or "bite-size@ CLE.

New initiatives

CLE has begun aggressively promoting its bursary program, under which lawyers with annual take-home incomes under $35,000 can attend CLE programs at a 50 per cent reduction. As a result of this promotion, the number of bursary applications has more than tripled over last year. At years' end CLE announced that the bursary program is being expanded to provide for price reductions of up to 50 per cent on publications.

The University of Western Ontario and CLE, in partnership, continue to offer on-line (Internet) courses on ADR. Registrants take courses from home or office at any time convenient to them. This initial foray into on-line education promises to yield broad insight into the potential it holds for general CLE program delivery.

A two-day brainstorming session on current CLE challenges planned for the end of January 1998, is expected to attract over 50 delegates from across the province, including representatives from the Law Society, CDLPA, CBAO, LPIC, the Advocate's Society, the Women's Law Association and the Criminal Law Association. This will kick off the work of a multi-party CLE Liaison Committee recently established by Convocation on the recommendation of the Professional Development and Competence Committee.

Specialist certification

Performance Data (*for 1997*)
No. of specialists certified: 42
No. of specialists re-certified: 50
No. of applicants rejected: 1
No. of new applicants currently seeking certification: 43

There are currently 605 certified specialists in Ontario. The certification program closed out the year by modestly exceeding its break-even budget mandate. It is expected that a report on the future of the certification program -- including proposals for its enhancement -- will be presented for Convocation's consideration in March.

D. Libraries

Great Library

Performance Data for 1997
- Number of requests for research & assistance: 80,100
- Number of visitors: 83,145

New initiatives

Major structural repairs in the Library began in December. A leak in the roof caused water damage to the ceiling plaster, and work is also being done on the second floor of the west wing where structural work will reinforce the floor. Library staff have been working to ensure the work results in only minimal service interruptions to library patrons.

Search-Law

After 14 years of service to members of the Law Society, the Search-Law research services were ended on December 31, 1997 due to a substantial reduction in the number of requests for the service over the past several years..

County libraries

The Director of Libraries visited 30 county law associations during 1997.

Technology. The technology upgrade -- computers, printers and CD-ROM towers -- has been completed at each of the 47 county libraries.

Training Sessions. The county librarians completed a two day training session in Toronto, learning about technology systems management and online research As well, QuickLaw continued to offer training courses for lawyers on how to conduct online searches at the county libraries. Feedback on the training and on the new research tools has been enthusiastic.

Archives

Performance data for 1997

- Requests for research assistance in 1997: 524 (309 internal, 215 external)
- 917 people took one of the organized tours of Osgoode Hall

New Initiatives

Public and member user fees for research assistance by archives staff were introduced in 1997. The fees will help offset expenses, as well as control the demands on staff time. Work continues on creating a database for minutes and debates of Convocation. The plan calls for providing the information on the Law Society's web site. Two historical exhibits -- on the history of Ontario's lawyers and women at the bar -- were showcased in 32 communities in 1997, as part of the Law Society's bicentennial. The exhibits will continue to be presented in 1998.

Information Systems

New Initiatives

Information Technology Strategy. In preparation for the Society's improvement and integration of its technological resources, several projects have been initiated:

- An improved firewall -- protecting the Society's electronic information from unauthorized, external access -- has been installed between the Society's systems and the Internet.
- An assessment of the present network system is underway to gain an understanding of the areas in need of upgrading in conjunction with Project 200.

Ongoing Projects:

- Work has begun on formulating a business continuity plan to augment electronic backup procedures already in place. The project will first determine the impact on the Society of an electronic (eg. systems failure) or physical disaster (eg. fire), and will then recommend methods for minimizing service disruptions in the event of such disaster.
- Improved long distance telephone rates have been negotiated with Sprint Canada
- Enhancement of forms, fees, and member systems is in progress to provide members with more electronic options for communicating with the Society.

E. Human Resources

Human Resources

New Initiatives and Activities

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

- Revised the Law Society's Harassment policy include workplace harassment to ensure compliance with the executive limitations. This process included selection and initial training for internal staff advisors on the revised policy.
- Provided facilitation training to staff acting as "change agents" for Project 200 and other operational project initiatives.
- Completed the annual performance management cycle which included performance appraisals for all employees, management training and implementation of pay for performance increases.
- Provided on-site emergency child care for five to 20 children of LSUC employees per day during the work interruption in the province's schools.

F. Communications

Website -- www.lsuc.on.ca

Performance data

- Number of web pages accessed (4th quarter) 83,959
  (78 % higher than the same period in 1996)
- Number of site "hits" in 1997 310,000

New Initiatives and Activities

Members now have the option of securely filing the Member Information Form through the Law Society's website (www.lsuc.on.ca). Other member forms are set to be added to the site in the months ahead. It is anticipated this added functionality will significantly increase the number of members who use the site to conveniently obtain information and electronically interact with the Law Society.

The Society's website has become the organization's primary tool for public legal information. Dial-a-Law Transcripts have been one of the most popular areas of the site since it was launched in the summer of 1996. A review of this information is currently underway to ensure that it is up to date and logically organized.

Ontario Lawyers Gazette

The Ontario Lawyers Gazette has completed its first year of publication. Member response to the six issues published in 1997 has been overwhelmingly positive. In 1998, the Gazette will continue to consider if paid advertising should be included in the publication. A market research study has indicated that the net revenue forecast for advertising is marginal and it is unclear how members would respond. The editor of the Gazette will consider what changes may be needed in order to make the publication more attractive to advertisers and may also survey members for their input. Benchers and staff are encouraged to submit suggestions and story ideas for the Gazette to the Communications Department.

Media Relations

Performance data

Media Inquires (requests of the Society from news media for information or interviews):
- 4th quarter 75

As is usual, a high number (more than 55 per cent) of the media inquires in the third quarter related to providing information about discipline matters or complaints against members. Other general inquires in the reporting period ranged from the surplus in Legal Aid, the LSUC lawsuit against legal publishers and a report by CBC television's Fifth Estate on the Law Society's investigation of a member.

Media Coverage (media reports about the Law Society or issues of interest to the Society):
- 4th quarter 227

Coverage of the Make-a-Will-Week program accounted for the single largest grouping of media coverage (more than 37 per cent).

Again, as with inquires, the primary item generating media coverage (about 21.7 per cent) relates to reporting on complaints issued against, or the outcome of disciplinary action taken by the Society against lawyers.

Legal Aid accounted for just less than 11 per cent of the coverage generated. Coverage related to the so-called surplus in fund spending, and the reallocation of funds to the family law section of the plan.

Make a Will Week

In November, 1997 The Law Society, in partnership with the Canadian Bar Association-Ontario (CBA) presented the first annual Make a Will Week. The program's aim was to focus attention upon the need for members of the public to have an up-to-date will. As part of the program 22 educational seminars were held across the province covering such topics as estate planning, preparing a will, and charitable giving. Over 3,600 people registered to attend one of the seminars.

An emphasis was placed on the importance of using a lawyer to draw up a will and Make a Will Week promoted the Society's Lawyer Referral Service (LRS) as a means of finding an appropriate lawyer to assist with the task.

The LRS fee was waived during the week and over 1,000 lawyers registered to participate in LRS during Make a Will Week.

G. Of Note...

- Staff raised over $7,000 for five selected charities in 1997, through various fund raising projects. Each year staff select, by voting, the charities they wish to support. In 1997, staff contributed to the Canadian Cancer Fund, Daily Bread Food Bank, Heart and Stroke Foundation, Children's Aid Society and Salvation Army.

- Over the holiday period in December, 2 ½ large barrels of food items were donated to the Daily Bread Food Bank, and 14 large boxes of warm winter clothing were given to two projects -- Project Warmth and Chill Out -- by Law Society staff.

compliance with executive limitations

A. Budgeting

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

➪Allow operating expenses to deviate from the budget in any significant way.
In compliance. Operating expenses for the nine months ended September 30 , 1997 were under budget by approximately $950,000. The variance is primarily attributable to the timing of expenditures. Latest estimates indicate the results for the year will be within budget.

➪Allow expenditures to deviate materially from the Society's mission, priorities and programs.
In compliance. Expenditures are monitored internally monthly to ensure there are no material deviations from budget. In addition, expenditure information is reported to the Finance and Audit Committee and Convocation on a quarterly basis.

➪Incur debt on behalf of The Law Society of Upper Canada, other than an operating line of credit.
In compliance.

➪Present a budget without:
- ♦a reasonable projection of revenues and expenses.
- ♦disclosure of planning assumptions.
- ♦disclosure of operating and capital items.
- ♦dedicating appropriate human and financial resources to implement Convocation's ends policies.

In compliance. The 1998 Budget as presented to, and approved by Convocation, included reasonable projections of revenues and expenses, disclosed all assumptions, and disclosed all operating and capital items. The 1998 Budget includes appropriate funds and human resources to accomplish the ends policies as determined by Convocation.

B. Asset Administration and Acquisition of Services

1.0 Unless directed otherwise, the CEO shall not:

➪Allow Society funds to be invested except in accordance with the Society's Investment Policy.
In compliance. Investment reports are presented to the Finance and Audit Committee quarterly detailing compliance and information regarding the investment mix.

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

In compliance. A facilities plan has been submitted to the Finance and Audit Committee outlining work that is required and estimated costs.

➪Operate without adequate insurance.

In compliance. A review has been completed by staff and an independent broker determining the levels of insurance coverage and their costs. A report was included in the January 1998 Finance and Audit Committee meeting material.

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

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

➪Make any purchase:

- If normally prudent protection against conflict of interest has not been taken.

In compliance. A Business Conduct Policy has been approved by Senior Management that ensures compliance with the Society's standards of business conduct which includes prudent protection against conflict of interest.

- If over $10,000 without having obtained competitive prices and quality, unless fully justified and documented.

In compliance. The Society requires three written quotations for all purchases in excess of $10,000.

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

In compliance. A central purchasing function is in place that has policies and procedures that must be followed.

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

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

➪Acquire, encumber, or dispose of real property.

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

C. Financial Condition

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

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

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

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

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

➪Use reserves (except for the Errors and Omissions fund) except as budgeted.
In compliance. Annual audited financial statements and quarterly unaudited financial statements detail the use of reserves.

D. Human Resource Principles

1.0 The Chief Executive Officer shall not operate without:

➪Job descriptions and regular performance appraisals for all staff.
In Compliance. The annual performance management cycle, which included performance appraisals for all employees was completed, along with relevant management training, and implementation of pay for performance increases.

1.2 The CEO will shall not operate without a workplace harassment policy for staff that prohibits the harassment of any person on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age.
In Compliance. The Society's harassment policy was revised to include workplace harassment. This process included selection and initial training of internal staff advisors on the revised policy.

E. Compensation and Benefits

1.0 With respect to employment, compensation and benefits to employees, consultants, contract workers and volunteers, the Chief Executive Officer shall not jeopardize the Society's fiscal stability.
In Compliance. Budgets are monitored monthly to ensure that employment arrangements do not jeopardize fiscal stability.

1.1 The Chief Executive Officer shall not change his/her compensation and benefits.
In Compliance. The Director of Human Resources reports that the CEO is compensated according to the terms of his contract which have not been changed.

1.2 The Chief Executive Officer shall not establish current compensation and benefits which deviate materially from the geographic or professional market for the skills employed.
In Compliance. The review of the Society's compensation, benefits and rewards program continues. Additional information will be identified as a result of the Projet 200 initiative.

1.3 The Chief Executive Officer shall not create compensation obligations that continue over a longer term than revenues can safely be projected.
In Compliance. Budget provisions ensure that there are sufficient funds to cover compensation obligations.

1.4 The Chief Executive Officer shall not fail to maintain a parental leave policy for staff.
In Compliance. The Law Society maintains a parental leave policy.

F. Communication and Support to Convocation

1.0 The CEO must provide Convocation with sufficient information and advice so that benchers are reasonably informed. Accordingly, the CEO must not:

➪Let Convocation be unaware of:

♦lawsuits affecting the Law Society.
In Compliance. There were no new lawsuits initiated in the final quarter of 1997

Note: With the development of a litigation committee, future reporting of matters of lawsuits will be reported to Convocation through the committee's regular reports to benchers. A report on current litigation matters is expected by the committee in March, 1998.

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Interim Report from the Working Group on Multi-Disciplinary Partnerships

Report to Convocation
February 27, 1998

The "Futures" Task Force -
3rd Interim Report of the Working Group on
Multi-Disciplinary Partnerships

Purpose of Report: Information

SUMMARY OF THE WORK TO DATE

1. The study of the Futures Task Force Working Group on Multi-Disciplinary Partnerships[1] (MDPs) has continued, with the following initiatives either completed or commenced/in progress since its last report to Convocation in September, 1997.

Discussion Sessions

2. A total of nine discussion sessions with lawyers selected by the working group were held in November and December 1997 in Toronto, Ottawa and London.

3. Thirty-one lawyers from a mix of large and small firms attended the sessions which were facilitated by one or more members of the working group. One session was held specifically for lawyers employed in large chartered accounting firms or their management consultant practices.

4. The discussion focused on questions prepared by the working group and provided to the participants in advance of the session. A copy of the discussion session materials is attached at Appendix 1.

5. The lawyers who participated in the sessions provided thoughtful and insightful commentary and raised important questions about the development of MDPs and how the legal profession might respond to them. All discussions were recorded.

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[1]The Working Group is composed of benchers David Scott, Robert Armstrong (co-chairs), Marshall Crowe and Heather Ross, J. Rob Collins, a partner with Blake, Cassels & Graydon, Toronto and Malcolm Heins, President of LPIC.

6. The information from the sessions has been summarized and will be used in conjunction with the results of Phase 2 of the study Professor Kent Roach is conducting for the working group (discussed below), and ultimately as key information in the analysis of the issues to be undertaken by the working group in Phase 3 before a final report is submitted to Convocation.

Professor Roach's Study

7. Phase 1 of the study undertaken by Professor Roach was completed in December 1997 and resulted in a paper authored primarily by Edward Iacobucci, Professor Roach's assistant in the study. The paper, attached at Appendix 2, is based on a comprehensive literature review and examination of current regulatory regimes, and identifies problems, potential problems and advantages of MDPs.

8. Phase 2 of the study commenced in February 1998 and involves consultations undertaken by Professor Roach with approximately 20 lawyers in specialty areas of private practice (again, selected by the working group).

9. The consultations are based on a document similar to that produced for the November and December 1997 sessions with lawyers, but include questions created by Professor Roach which have a more practical focus for practising lawyers.

10. The questions flow from two keys issues: what are the impediments to MDPs and how would the profession be affected at a practical level by this structure. The purpose of the Phase 2 consultations is to obtain the "life experiences" of lawyers to demonstrate in practical terms the problem areas for an MDP practice.

11. The consultations are scheduled for completion by mid- to late-March, 1998.

Discussions with Chartered Accountants

12. The working group has arranged discussion sessions with representatives of the chartered accounting profession. The sessions will include a partner from each of the eight largest chartered accounting firms, together with the firm's general counsel.

13. The discussion will be based on questions similar to that appearing in the Appendix 1 document, but adapted to reflect a more general professional services focus.

14. As it enters these discussions, the working group is mindful the chartered accountant's 1995 study of MDPs and the initiatives which have occurred in the last two years resulting in affiliations between accounting and law firms, primarily in Europe, but also in the United States and Canada.[2]

15. The working group believes that these events make the discussions with accountants an essential part of the study.

International Bar Association (IBA) Information

16. The working group has reviewed drafts of reports emanating from the November 1997 New Delhi meeting of the IBA's Standing Committee on MDPs, chaired by Ward Bower and on which Rob Collins, a member of the working group, sits.

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[2]Ernst & Young in Toronto has a management arrangement with a law firm, Donahue & Associates, which is separate from but situated within the offices of the accounting firm.

17. The broad issues debated at the IBA Committee mirror those which the working group has identified as key to any discussion about lawyers and MDPs - independence of the profession, conflicts, confidentiality and solicitor/client privilege.

18. The working group intends to review the final report when it is released and decide how the international focus of that group bears on or may be applied to the working group's analysis of the issues for Ontario lawyers.

MDP "Form"

19. In September 1997, Convocation approved for distribution to the membership with the Membership Information Form a separate form including questions about current activity related to multi-disciplinary practice. The working group designed the questions in the hope of obtaining some data on what is occurring by way of relationships, formal or otherwise, between lawyers and other professionals or service providers.

20. The form was distributed on the basis that the response was voluntary and anonymous. As of February 18, approximately 8800 completed forms have been returned. Nearly 30 calls or e-mails have been received by working group staff with questions about the form and/or the MDP study itself. All contacts have been on a positive note.

21. The working group and Information Systems staff at the Law Society will be reviewing the data from the form after it has been scanned and processed within a separate forms database.

NEXT STEPS

Monitoring Other Initiatives

22. The working group has become aware of studies on MDPs recently underway at the Federation of Law Societies, which is in the process of proposing terms of reference to its board, and the Canadian Bar Association (CBA) through a small committee which is in the formative stages.

23. The working group, affirming the need to continue with its own study in as timely a manner as possible, has determined that it does not wish the fact of those studies to delay completion of its study and the report to Convocation.

24. Accordingly, while the working group will monitor these studies and share, as appropriate, information with both the Federation and the CBA, the Law Society will move forward with its study as planned.

Exchange of Information with Alberta

25. To date, the only other law society reviewing MDPs is the Law Society of Alberta, which has made a request that as it monitors the Ontario study, information be shared with Alberta.

26. The working group, noting the helpful information earlier received from Alberta and the continuing dialogue with that law society on the issue of MDPs, agreed that, with Professor Roach's approval, the Phase 1 paper will be sent to Alberta, after this report to Convocation.

27. In response to a further request from Alberta to join a working group meeting through teleconferencing, the working group agreed that at the appropriate time this would be facilitated.

APPENDIX 1

The Futures Task Force Working Group
on Multi-Disciplinary Partnerships

Discussion Session Materials
November 17, 1997

THE FUTURES TASK FORCE WORKING GROUP ON MULTI-DISCIPLINARY PARTNERSHIPS

Introductory Note

The Futures Task Force Working Group on Multi-Disciplinary Partnerships (MDPs) is studying the provision of legal services to the public through multi-disciplinary partnerships, defined as business arrangements in which individuals with different professional or service qualifications practise together in partnership and combine their skills in providing advice and counsel to the consumers of these services. The working group is also reviewing three other types of arrangements: multi-disciplinary *practices,* multi-national firms and ancillary businesses.

The Working Group has reviewed a broad range of literature on the subject of MDPs, and is aware of the trend toward, and in some jurisdictions the realization of, MDPs between various professions. The broad questions for the Working Group have been:

- Is the movement to MDPs inevitable?
- If it is inevitable, how does the legal profession respond?
- What should the profession's regulatory response be to MDPs? Should limits on the structure be imposed, and if so, how?
- What is the role of the Law Society in dealing with MDPs?

The working group recently embarked on a more intricate examination of practical problems and concerns that the structure of MDPs may pose for the practice of law. This part of the study will continue for a number months, and result in a defined set of issues that will assist the working group in determining whether MDPs are workable and, if so, the type of regulatory framework within which MDPs could operate.

In the interim, the working group decided that a series of meetings should be held with members of the profession, representing lawyers in private practice and business, to obtain their views on the subject of MDPs. The working group believes the results of these sessions will assist in defining the scope of the problem areas and workable solutions to those problems.

Background information on the study which provides context for the Society's review of the subject is attached for your review in the paper entitled "The Law Society and Multi-Disciplinary Partnerships".

Questions for Discussion

The working group prepared the following questions which touch on a number of important issues relevant to MDPs and the practice of law. You are invited to discuss your responses to these questions with members of the working group when you attend the session you have chosen.

While the questions are broadly stated, you are encouraged to address them from your own practice or professional perspective, and how the issues may impact on you personally as a lawyer and member of the business community.

1. What impact do you see MDPs having on the profession economically, practically and ethically?

2. Are MDPs a practical alternative for sole practitioners and small firms?

3. Will MDPs enhance the availability and delivery of legal services to the public?

4. Is there a danger that MDPs will concentrate legal and professional expertise too narrowly, for example, in larger firms for sophisticated clients, at the expense of decreased access for the "person on the street"?

5. Should MDPs be limited to associations among regulated professions, or should the field be broadly defined to include the possibility of associations among any professions/disciplines?

6. How serious an issue is control of the partnership in an MDP setting? Should lawyers, as opposed to any other professions/disciplines always be in the controlling position, or could a shared responsibility work?

7. What insurance issues do you see MDPs creating for lawyers? Is limited liability for professionals an issue that should be addressed in this context?

8. Do you see MDPs as affecting how lawyers prepare themselves for practice, and the pre-and post-call education that is undertaken as a matter of qualifying and updating knowledge for legal practice? If so, in what way(s)?

9. Do you think that allowing MDPs will:
   - threaten the independence of the profession?
   - open the door for an eventual loss of the right of self-regulation?
   - affect the quality of services provided by the profession?

   Why?

10. What do you see as the primary benefit of MDPs in today's legal marketplace/business world?

11. What do you see as the primary drawback to MDPs? Specifically, what practical negative impact do you see on issues such as confidentiality, privilege and independence?

12. Accepting that other professions/disciplines are making incursions into the field(s) of expertise traditionally occupied by lawyers, if allowing MDPs is *not* acceptable, what are the realistic alternatives to making the legal profession competitive in the marketplace?

The Law Society and Multi-Disciplinary Partnerships

Background

1. In 1996, the Law Society's Professional Conduct Committee began a review of multi-disciplinary partnerships[1] as a result of a member's inquiry to the Society about his client's proposal to include lawyers within the client's professional services firm.

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[1]In 1989, the Sub-Committee of the Professional Conduct Committee on Lawyers in Partnership with Non-Lawyers directed research on the subject. A report was apparently prepared but was never considered by Convocation.

2. Stephen Traviss, secretary to the Committee, directed research on the subject in the summer of 1996 and that formed the basis for a subsequent review by the new Professional Regulation Committee in November 1996. Thereafter, the subject was included in the mandate of the Society's Futures Task Force, through the Working Group on Multi-Disciplinary Partnerships.[2]

3. The Law Society was also aware and was monitoring the progress of a study undertaken by the Institute of Chartered Accountants of Ontario on multi-disciplinary partnerships.

Commentary

4. The Law Society's Role Statement discusses a number of principles related to the delivery of legal services by the profession:

5.2 ...one of the distinguishing features of a profession is that its members possess specialist knowledge and skills which they put at the service of the public. Usually, the members of the profession have a monopoly on the provision of these specialist services - a monopoly conferred for the purpose of protecting the public from self-appointed practitioners who may lack the necessary learning, competence or ethical standards. Section 50 of the Law Society Act confers such a monopoly on members of the Law Society. It reads in part:

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

6.2 The principle of the independence of the legal profession is grounded in the public interest. It springs from the conviction that if we wish to maintain a free and democratic society, it is essential that lawyers be independent of government, and of any other group.

6.3 The state is not the only force in society from which the citizen needs protection. Whether working in private practice, government service or an in-house legal department, a lawyer's first allegiance must be to the cause of justice and the rule of law. It is in this broad sense that the independence of the legal profession must be upheld.

7.6 Many of the provisions of the Law Society Act and its regulations arise from the Society's obligation to uphold the integrity and honour of the legal profession - for example:

...

- *the power to prescribe the financial books, records and accounts to be maintained by members who practise, and the power to examine and audit those records;*
- *the duty to investigate complaints of professional misconduct or conduct unbecoming a barrister and solicitor;*

...

- *the power to impose disciplinary sanctions (up to and including disbarment and cancellation of membership) on members guilty of professional misconduct or conduct unbecoming; and*
- *the power to maintain a fund to be used to compensate clients and beneficiaries of trusts who have suffered loss as a result of a lawyer's dishonesty.*

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[2]The members of the Working Group are David Scott and Robert Armstrong (Co-chairs), Rob Collins, Marshall Crowe, Heather Ross and Malcolm Heins (LPIC), assisted by staff members Stephen Traviss and Jim Varro.

5. In its practical application of the Role Statement, the Law Society, as the profession's regulatory body, prescribes, constrains and prohibits certain conduct. Although there is no specific prohibition on multi-disciplinary partnerships, the Society's regulatory requirements and provisions effectively prohibit partnerships with non-lawyers.

6. This leads to the following broad questions:
   - Why should the Society prevent the practice of law through multi-disciplinary partnerships?
   - What is the identifiable harm to the public such that the effect of the Society's regulatory scheme is to prohibit partnerships with non-lawyers?

7. Answers to these questions will flow from the Working Group's analysis of the theory and practical issues related to MDPs.

8. A starting point is a cursory review of the Law Society's regulatory and insurance schemes.

Regulatory Provisions

9. Section 50 of the *Law Society Act* requires practising barristers and solicitors or those holding themselves out as such to be members of the Society. Accordingly:
   - non-lawyers cannot be held out as or represented to be lawyers; and
   - the words "barristers and solicitors" could not be used in a firm name unless all members of the partnership were lawyers.

10. To date, lawyers may not practise as or through a corporation.

11. There are a number of regulatory requirements for books, records and accounts of members.

(i) Subsection 7(2) of Regulation 708 under the *Law Society Act* requires a bankrupt lawyer to obtain the written permission of Convocation or the Discipline Committee to accept trust funds from clients.

(ii) Subsection 14(1) requires a lawyer to deposit trust funds received from a client in a trust account "to be kept in the name of the member or in the name of the firm of which he or she is a member or by which he or she is employed". "Member" is defined for this section as including a firm of members, and is thus limited to lawyers.

(iii) Subsection 14(9) states that funds drawn from trust for payment of fees and disbursements shall be drawn only by a cheque in favour of the lawyer or by transfer to another bank account (but not a trust account) in the lawyer's name.

(iv) Subsection 14(10) states that a trust cheque cannot be signed by a person other than a member except in "exceptional circumstances" and when the person to whom such authority has been delegated is bonded.

(v) Subsection 15(1) requires, among other things, that a lawyer must keep a separate client trust ledger for every client on whose behalf trust funds have been received and disbursed.

(vi) Subsection 16(2) requires lawyers to prepare and file annually with the Society the prescribed forms respecting trust accounts and other financial matters.

12. The Rules of Professional Conduct include the following:

(i) Rule 4 on Confidentiality
Without the express authority of the client, a lawyer cannot disclose to third parties information obtained in the course of the solicitor/client relationship, subject to some narrow exceptions.

(ii) Rule 5 on Conflict of Interest
Commentary 2 of the Rule discusses one of the guiding principles upon which the need for a conflicts rule is based, namely, that the client or his or her affairs may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from compromising influences.

(iii) Rule 9 on Fees and Disbursements
Lawyers are not permitted to charge "hidden" fees or divide fees with individuals who bring in business to the practice and cannot reward individuals for referring business. Lawyers are also prohibited from dividing fees with other lawyers who are not partners or associates unless the client consents.

(iv) Rule 12 on Advertising and Promotion
The Rule prohibits steering, arranging for referrals of business and direct solicitation. It also disallows the use of the lawyer's name as solicitor in any advertising material offering goods or services to the public. It outlines permissible forms for firm names (generally, restricted to the names of the members of the firm or deceased or retired members thereof) and specifically prohibits the use of a trade name in or for a practice. It requires that advertising for the services of lawyers, among other things, not be misleading.

(v) Rule 16 on Delegation of Responsibility
There are defined limits on what can be delegated to non-lawyer staff in a practice, and a stated requirement that the lawyer exercise the required level of supervision over such staff. The rule requires that every law office, including a branch office of the law firm, be effectively supervised by a lawyer.

(vi) Rule 17 on Outside Interests and the Practice of Law
The Rule is drafted in terms of "engaging" in other professions or businesses concurrently with the practice of law, such that those activities must not "jeopardize the lawyer's professional integrity, independence or competence". The Rule appears to have been broadly stated to encompasses the widest range of issues relating to the professional and ethical responsibilities to individual clients when extra-legal work is pursued.

(vii) Rule 19 on the Unauthorized Practice of Law
The Rule itself simply states that "The lawyer should assist in preventing the unauthorized practice of law". The Commentary to the Rule recognizes that non-lawyers, while having skills that may assist lawyers, "are immune from control, regulation, and, in the case of misconduct, from discipline by the Society". It also affirms the need for direct supervision through lawyers' assumption of "complete professional responsibility for all business entrusted to them". The Rule states the obvious in that "the amount of any fee to be charged to a client should be approved by the lawyer".

Insurance

13. The Society's mandatory liability insurance program has been designed to provide a measure of protection for clients resulting from the negligence of their lawyers. While other issues respecting insurance may require review, two are risk and vicarious liability.

14. With respect to risk, one of the recommendations of the Insurance Committee Task Force which reported to Convocation in October 1994 was that the Society's insurance program through the Lawyers Professional Indemnity Company (LPIC) move towards a system in which the cost of insurance generally reflects risk.

15. In its September 1996 Report to Convocation, LPIC, based on data collected on lawyers' practices and practice management procedures and from historical claims information, determined that given the premium implications, it should not move to risk-based program in the short term[3]. But the Coverage Committee "confirmed its commitment to a risk-based program over the long-term".

16. If lawyers engage in partnership with other professionals or business people, the question of the parameters of the insurable risk will require careful review. One variable may be how the retainer with individual clients is framed for a particular matter and the level of multi-disciplinary activity within that retainer.

17. With respect to vicarious liability, currently, all lawyers practising in Ontario in association or partnership with other lawyers are required to purchase LPIC's Standard Innocent Partner/Vicarious Liability Coverage. Consider how this would apply in a multi-disciplinary practice. For example, if the primary retainer is with the lawyer, but the client is advised that other professionals will contribute to the work on the given matter, would the lawyer be ultimately responsible for the entire work product and thus for any negligent performance on the part of the other professionals?

18. One option would be to have the insurance coverage extend, as a matter of protection of the public interest, to "law-like" practices where lawyers in the provision of these services have traded on their professional status and reputation.

19. Some jurisdictions are seeking to move towards a limited liability scheme. In Alberta, the Law Society has prepared a paper for the Alberta government recommending that Alberta's *Partnership Act* be amended to "limit the personal malpractice liability of partners in professional partnerships to matters in which they have had personal involvement or have played a direct supervisory role, or of which they had personal knowledge at the time the conduct or event occurred".

Concluding Comments

20. The challenge of regulating lawyer members of multi-disciplinary partnerships becomes apparent when the proposed structure of such a partnership is considered.

21. For example, how are the interests of lawyers, who by virtue of their calling are required to primarily serve the interests of their clients, reconciled with the interests of a partnership whose varied non-legal membership may not be required to practice in the same manner? Essentially, this is the fundamental issue of the independence of the profession which overlays all discussions about MDPs.

22. Current developments in the marketplace for legal services make this study a necessity. The lasting effect of the changes that are occurring are unknown. The existence of multi-disciplinary partnerships in the marketplace may or may not change the current availability of *legal* services. It may, however, make it easier for the public to access a range of *professional* services more economically.

23. The Law Society study, as it relates to the profession, is dedicated to determining the effectiveness and usefulness of multi-disciplinary partnerships, and how the Society as governor of the profession responds. The Society will also consider the secondary question of the prospective benefits for the public as a function of its relationship with the professionals who serve it.

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[3]The report indicated that the premiums, according to a defined area of practice, would range from a low of $4084 for civil litigators to a high of $17,397 for real estate practitioners.

APPENDIX 2

Multi-Disciplinary Partnerships: A Review of the Literature

Kent Roach and Edward Iacobucci

(see Review in Convocation file)

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ORDERS

The following Orders were filed.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF Law Society Act;

AND IN THE MATTER OF Dennis Michael Topp, of the City of North York, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 27th day of July, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Dennis Michael Topp be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor. Convocation further orders that he pay Law Society costs in the amount of $1,750.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Alan Herbert Coles, of the City of Thornhill, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 16th day of May, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance but represented by Duty Counsel, wherein the Solicitor was found guilty of conduct unbecoming a barrister and solicitor and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Alan Herbert Coles be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 10th day of April, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Ross Morrison, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Joseph Reed Hunter be reprimanded in Convocation and pay Law Society costs in the amount of $3,500.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Walter Wysocky, of the City of Toronto, a Barrister and Solicitor (thereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 24th day of August, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Walter Wysocky be suspended for a period of three months commencing August l, 1997 and thereafter indefinitely until he has complied with the following:

1. He provide psychiatric evidence satisfactory to the Society that he is fit to practise law;

2. He file the requisite forms to the satisfaction of the Law Society of Upper Canada for each of the years 1994, 1995 and 1996;

3. Prior to returning to the practice of law, he apply for admission to the Practice Review Programme and that when he re-engages in the practice of law he enrol in that programme and comply with its recommendations:

4. He enter into an undertaking which will govern his future relations with the Law Society of Upper Canada.

DATED this 28th day of October, 1997

"T. Carey"
Acting Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 6th day of September, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Thomas Michel Hicks be suspended for a period of one month commencing as of the date of this Order and continuing indefinitely thereafter until his filings are made.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Paul Edward Mallon, of the City of Mississauga, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 8th day of September, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Paul Edward Mallon be suspended for a period of four months following his administrative suspension, and continuing indefinitely until his books and records are produced and all filings are brought up to date, and that upon resumption of practice he enrol in the Practice Review Program.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF William Sutherland Mathers, of the Town of Kincardine, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 17th day of September, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that William Sutherland Mathers be suspended fora period of two months commencing November l, l997 and continuing indefinitely thereafter until the books and records have been produced to the Law Society.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 17th day of April, 1997 and the Report and Decision of the Discipline Committee dated the 15th day of August, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Frank Andrew Theriault be suspended for a period of six months commencing at the conclusion of his administrative suspension and continuing indefinitely thereafter until his filings are completed, and that he pay Law Society costs in the amount of $400.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 24th day of June, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Edward White, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Clifford Paul Moss be suspended for a period of three months effective as of the date of this Order, and continuing indefinitely thereafter until he has made the requisite filings and produced his books and records to the Law Society.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Janice Marie Porter, of the City of London, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 11th day of June, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Janice Marie Porter be suspended for a period of twelve months to commence at the conclusion of her administrative suspension.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Frank Arthur Ault, of the City of Ottawa, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 17th day of September, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of conduct unbecoming a barrister and solicitor and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Frank Arthur Ault be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Oliverio Eugenio Massimiliano, of the City of Sudbury, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 4th day of September, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Brian Greenspan, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Oliverio Eugenio Massimiliano be suspended for a period of one month commencing December 1, 1997.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Margaret Vera Rose Phelps, of the Regional Municipality of Niagara Falls, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 6th day of September, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Margaret Vera Rose Phelps be suspended for a period of twelve months effective as of the date of this Order, and continuing indefinitely thereafter until she replies to the Law Society with respect to the particulars set out in paragraph 2(e) of Complaint D172/96 and in addition complies with the following:

1. Provides to the Law Society an opinion from a psychiatrist approved by the Law Society that she is mentally capable of resuming the practice of law;

2. Practises only as an employee of a solicitor approved by the Law Society for a minimum period of three years or for such other period as is recommended by her psychiatrist referred to in condition l;

3. Provides to the Law Society an authorization to release the particulars of this disciplinary proceeding to any prospective employer with whom she proposes to practise under condition 2.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Leo Muzzatti, of the City of Windsor, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 3rd day of September, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Leo Muzzatti be suspended for a period of one month commencing January l, 1998.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 9th day of September, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Peter Guy Martin be reprimanded in Convocation.

DATED this 28th day of October, 1997

"H. Strosberg"
Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 27th day of June, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Ian R. Mang, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Gordon Bruce Clark be suspended for a period of one month commencing December 13th, 1997; that he provide copies of all correspondence between him and the Law Society to his solicitor, Ian R. Mang, for a period of two years from the date that this matter is disposed of by Convocation; that upon his reinstatement, he enrol in and co-operate with the Practice Review Program; and, that he seek psychological or psychiatric assistance and participate in whatever therapy is recommended.

DATED this 27th day of November, 1997

"R. Manes"
Acting Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 27th day of June, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Ian R. Mang, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Gordon Bruce Clark be suspended for a period of one month commencing December 13th, 1997 and indefinitely thereafter until he pay the Law Society's costs in the amount of $1,000; that he provide copies of all correspondence between him and the Law Society to his solicitor, Ian R. Mang, for a period of two years from the date that this matter is disposed of by Convocation; that upon his reinstatement, he enrol in and co-operate with the Practice Review Program; and, that he seek psychological or psychiatric assistance and participate in whatever therapy is recommended.

DATED this 27th day of November, 1997

"R. Manes"
Acting Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Roland William Paskar, of the City of Mississauga, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 23rd day of October, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Joseph Schwartz, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Roland William Paskar be suspended for a period of one and a half months commencing December l, 1997 and continuing indefinitely thereafter until he produces a medical report satisfactory to the Society that he is fit to practise law; and, that he pay Law Society costs in the amount of $750.

DATED this 27th day of November, 1997

"R. Manes"
Acting Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Christopher Marc Cloutier, of the City of Orleans, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 23rd day of October, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Christopher Marc Cloutier be disbarred as a Barrister and that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 27th day of November, 1997

"V. Krishna"
Acting Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Peter Newton Ward, of the Town of Bracebridge, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 9th day of October, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Brian Heller, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Peter Newton Ward be suspended for a period of one month commencing December 14, 1997.

DATED this 27th day of November, 1997

"V. Krishna"
Acting Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Daniel George Arnold, of the City of Ottawa, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Committee dated the 5th day of March, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Duty Counsel, wherein the Solicitor's application for re-instatement was granted and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Daniel George Arnold be re-instated to membership in good standing of the said Society on the following conditions:

1. He article for the regular articling period;

2. He produce from his principal a letter indicating that he is able to resume the practice of law and addressing the following: his ability to deal with stress; his ability to deal with clients; that he has a reasonable ability to deal with problem solving; and, that he can work with reasonable timetables and schedules;

3. He disclose to his principal the Law Society requirement of re-articling and the events that have led to this requirement.

4. He write the Bar Admission Course examinations in Real Estate and Business prior to resuming practice;

5. In the event that the Solicitor is unable to secure an articling position after reasonable search and reasonable time, he may re-apply to a committee of Convocation, who will deal with this matter at first instance;

6. Prior to resuming practice, a report by a psychiatrist approved by the Law Society be provided indicating that the Solicitor is fit to resume the practice of law. The cost of this report to be borne by the Law Society providing the other requirements of this Order have been satisfied;

7. On resumption of practice, that he not practise as a sole practitioner and that he be supervised by a lawyer satisfactory to the Law Society for a period of three years, to be reviewed by the Society at that time;

8. On reasonable request of the Society, his supervising lawyer or lawyers produce a report addressing the same issues as reported on by his principal;

9. The Solicitor's arrears of fees and the fees for the required Bar Admission Courses be waived.

DATED this 21st day of October, 1997

"P. Epstein"
Acting Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 21st day of October, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Kenneth Leo Clarke be suspended for a period of one month commencing at the conclusion of his administrative suspension and continuing indefinitely thereafter until he provides the necessary documents in regard to the estate of Navena Dimitrijevic; and, that he pay Law Society costs in the amount of $3,050.00.

DATED this 27th day of November, 1997

"R. Manes"
Acting Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Kenneth Ross Bruce, of the City of Kingston, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 20th day of October, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Kenneth Ross Bruce be granted permission to resign his membership in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 27th day of November, 1997

"V. Krishna"
Acting Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 27th day of July, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Warren Arnold Singer be suspended for a period of nine months commencing September 25, 1997 and indefinitely thereafter until his books and records are brought up to date to the satisfaction of the Law Society.

DATED this 27th day of November, 1997

"V. Krishna"
Acting Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 21st day of May, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Shayna Bella Kravetz be suspended for a period of five months commencing at the conclusion of her current administrative suspension and continuing indefinitely thereafter until the outstanding filings have been made and the required books and records produced to the Society.

DATED this 27th day of November, 1997

"V. Krishna"
Acting Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 21st day of October, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Michael Takatsch be suspended for a period of one month definite and indefinitely thereafter until he has satisfactorily replied to the Law Society with respect to his client Tom Gale.

DATED this 27th day of November, 1997

"V. Krishna"
Acting Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Nellie Maria Lanteigne, of the City of Sudbury, a Barrister and Solicitor (thereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 29th day of January, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Chris G. Paliare, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Nellie Maria Lanteigne be reprimanded in Convocation.

DATED this 26th day of June, 1997

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

CONVOCATION ROSE AT 4:15 P.M.

Confirmed in Convocation this 27 day of March, 1998

Harvey T Strosberg
Treasurer