

24th May, 1996

MINUTES OF REGULAR CONVOCATION

Friday, 24th May, 1996
9:00 a.m.

PRESENT:

The Treasurer (Susan E. Elliott), Aaron, Adams, Angeles, Backhouse, Bobesich, Carey, R. Cass, Cole, Copeland, Crowe, Curtis, DelZotto, Epstein, Farquharson, Finkelstein, Gottlieb, Harvey, Lamont, Lawrence, MacKenzie, O'Connor, Pepper, Puccini, Ross, Ruby, Sachs, Scace, Scott, Sealy, Stomp, Strosberg, Swaye, Thom, Wardlaw, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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ADMISSIONS AND MEMBERSHIP COMMITTEE

Meetings of May 14, 1996

Mr. Epstein presented the Reports of the Admissions and Membership Committee for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS AND MEMBERSHIP COMMITTEE begs leave to report:

Your Committee met on Tuesday, the 14th of May, 1996, the following being present: Mr. Epstein (Chair) and Messrs. Armstrong, Goudge and MacKenzie.

B.
ADMINISTRATION

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

B.1.1. Bar Admission Course

The following candidates having successfully completed the 37th Bar Admission Course now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, May 24th, 1996:

Devindra Lalbeharry
Predrag Narancic
Timothy Andrew Cumming
Bonnie Mae Tulloch

Approved

B.2. MEMBERSHIP UNDER RULE 50

B.2.1. (a) Retired Members

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

Peter Brooke Bell	Toronto
Martin Aylmer Bitz	London
Vernon Patrick Dunn	Mississauga
Bernard Joseph Goodal	Chatham
William Frederick Jacobs	Toronto
Thomas Russell Judge	Oakville
Francis Eugene LaBrie	Oshawa
Clemens Michael Neiman	Bolton
Ann Maxine Smith	Ottawa

Approved

B.2.3. (b) Incapacitated Members

B.2.4. The following member is incapacitated and unable to practice law and has requested permission to continue his membership in the Society without payment of annual fees:

Richard Victor Peter Eagan	London
Dennis John Meisner	Hamilton
Victor Louis Palermo	Etobicoke
Ray Simser	Taiwan
Patricia Ellen Taylor	Scarborough

Approved

B.3. RESIGNATION - REGULATION 12

B.3.1. The following members have applied for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. These members have requested that they be relieved of publication in the Ontario Reports:

- (1) William Ernest Bruce of Toronto, Ontario, was called to the Bar on February 8, 1994. He declares that he has not engaged in practice in Ontario. The annual fee is outstanding. The annual filings are up to date.
- (2) Barbara Susan Cohen of Nepean, Ontario, was called to the Bar on March 20, 1991. She states that she ceased practising in December 1995. All trust funds have been accounted for and paid over to the persons entitled thereto. The annual fee is paid in full. The annual filings are up to date.
- (3) Sheila Ann Hammond of London, Ontario, was called to the Bar on February 8, 1993. She states that she ceased practising law in June 1995, and that all clients' matters have been completed and disposed of, or arrangements made. The annual filings are up to date.

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- (4) David Charles Wray MacDonald of Toronto, Ontario, was called to the Bar on April 7, 1983. He is currently suspended for nonpayment of the 1983/84 annual fee. He declares that he has never engaged in the practice of law. The annual filings are up to date.
- (5) John Anthony McAndrew of Toronto, Ontario, was called to the Bar on February 8, 1994. He states that he engaged in the practice of law for approximately nine months (October 1994 to June 1995). He further states that all client matters were completed and disposed of, or arrangements made. The annual fee is paid in full, The annual filings are up to date.
- (6) Gal Paul Pearl of North York, Ontario, was called to the Bar on February 7, 1996. He declares that he has not engaged in the practice of law in Ontario. The annual fee is paid in full. The annual filings are up to date.
- (7) John Sherman Sillers of Toronto, Ontario, was called to the Bar on June 25, 1959. He declares that he has not engaged in the practice of law in Ontario since June 1995. Prior to his resignation from the Municipality of Metropolitan Toronto Legal Department, arrangements were made to have other solicitors within the Legal Department complete all matters for which he was responsible. The annual fee is paid in full. The annual filings are up to date.

Approved

C.
INFORMATION

C.1. RESULTS OF THE COMMON LAW EXAMINATION

C.1.1. The following candidate successfully completed the January 1996 Common Law Examination:

Alfred Macchione	Province of Quebec
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Noted

C.2. CHANGE OF NAME

C.2.1. <u>From</u>	<u>To</u>
Anne-Marie Madeleine <u>Aubry</u>	Anne-Marie Madeleine <u>Murphy</u> (Birth Certificate)
John Andrew <u>Iwasykiw</u>	John Andrew <u>Iwasykiw Johnson</u> (Change of Name Certificate)
Maria da Graca Alcaide Janicas	Maria da Graca <u>Kurke</u> (Marriage Certificate)
<u>Evert Jan Kok</u>	<u>Edward John Koke</u> (Change of Name Certificate)

Approved

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C.3. ROLLS AND RECORDS

C.3.1. (a) Disbarments

C.3.2. On April 25, 1996, in Convocation, the following members have been disbarred and their names removed from the rolls and records of the Society:

David Henry Conrad	Markham	19/03/70
Howard William Cohen	Thornhill	22/03/74
Robert Douglas Laird Smith	Brampton	06/04/79
Derrick George Nayduk	Toronto	09/02/93

Noted

ALL OF WHICH is respectfully submitted

DATED this 24th day of May, 1996

P. Epstein
Chair

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS AND MEMBERSHIP COMMITTEE begs leave to report:

Your Committee met on Tuesday, the 14th of May, 1996, the following being present: Mr. Epstein (Chair) and Messrs. Armstrong, Goudge and Mackenzie.

B.
ADMINISTRATION

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

B.1.1. Bar Admission Course

The following candidates having successfully completed the Bar Admission Course now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, May 24th, 1996:

Margaret Cairine Best	37th BAC
Mary Elvira Elizabeth Anna Bianchi	37th BAC
Anthony Kenneth Bondy	37th BAC
Richard Jonathan Braudo	37th BAC
Inderpaul Singh Chandhoke	36th BAC
Jatinder Cheema	37th BAC
Shun Wai Willie Cheng	37th BAC
Peter Baptiste Coon	37th BAC

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Leon Stephen Damonze	37th BAC
Margot Lynn Denomme	37th BAC
Maria Manuela Lopes De Sousa	37th BAC
Karen Marie Dickson	37th BAC
Susan Carolyn Dunn	37th BAC
Laura Arlynn Dupuis	37th BAC
Yolande Sharon Edwards	36th BAC
Jeanette Elizabeth Ellis	37th BAC
Douglas Robert Eyahpaise	37th BAC
Frances Susan Fisher	37th BAC
Lesley Alma Lynn Gervais	37th BAC
Myron Roman Haluk	37th BAC
Jane Margaret Harrison	37th BAC
James Kenneth Roy Iliffe	37th BAC
Stella Owan Iriah	37th BAC
Steven Anthony Karnay	37th BAC
Robin Lara Linden	37th BAC
Robert Wallace Lockhart	37th BAC
Donna Marie Marchand	37th BAC
Glenn Edward Matthews	37th BAC
Kathleen Ann Niccols	37th BAC
Mario Jorge de Sousa Paiva	37th BAC
Viola Elizabeth Parvin	37th BAC
Sheri Darlene Elizabeth Price	37th BAC
Gina Rossi	37th BAC
Mohamed Sieyf Shahabuddeen	37th BAC
Neil Alexander Shalapata	37th BAC
Rima Shouli	37th BAC
Sunita Siwach	37th BAC

Approved

B.1.2. Transfer from another Province - Section 4

B.1.3. The following candidates having completed successfully the Transfer Examination, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, May 24th, 1996:

Elisabeth Colson	Province of Quebec
Mary Elizabeth Dawson	Province of Nova Scotia
Sterling Dietze	Province of Quebec
Cindy Ann Morantz	Province of Quebec
Saul Schipper	Province of Quebec
Bogdan Teofilovici	Province of Quebec

Approved

C.
INFORMATION

C.1. RESULTS OF THE TRANSFER EXAMINATION

C.1.1. The following candidates have successfully completed the April/May 1996 Transfer Examination:

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Elisabeth Colson	Province of Quebec
Sterling Dietze	Province of Quebec
Cindy Ann Morantz	Province of Quebec
Saul Schipper	Province of Quebec
Bogdan Teofilovici	Province of Quebec

Noted

C.1.2. The following candidate successfully completed the January 1996 Transfer Examination:

Mary Elizabeth Dawson	Province of Nova Scotia
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Noted

ALL OF WHICH is respectfully submitted

DATED this 24th day of May, 1996

P. Epstein
Chair

It was moved by Mr. Epstein, seconded by Mr. Carey that the Reports be adopted.

Carried

THE REPORTS WERE ADOPTED

CALL TO THE BAR

The candidates listed in the Reports of the Admissions and Membership Committee were called to the Bar by the Treasurer and taken by Mr. Strosberg before Mr. Justice Gerald F. Day to sign the Rolls and take the necessary oaths.

Margaret Cairine Best	37th Bar Admission Course
Anthony Kenneth Bondy	37th Bar Admission Course
Richard Jonathan Braudo	37th Bar Admission Course
Inderpaul Singh Chandhoke	36th Bar Admission Course
Jatinder Cheema	37th Bar Admission Course
Shun Wai Willie Cheng	37th Bar Admission Course
Peter Baptiste Coon	37th Bar Admission Course
Timothy Andrew Cumming	37th Bar Admission Course
Leon Stephen Damonze	37th Bar Admission Course
Margot Lynn Denomme	37th Bar Admission Course
Marie Manuela Lopes De Sousa	37th Bar Admission Course
Karen Marie Dickson	37th Bar Admission Course
Susan Carolyn Dunn	37th Bar Admission Course
Laura Arlynn Dupuis	37th Bar Admission Course
Yolande Sharon Edwards	36th Bar Admission Course
Jeanette Elizabeth Ellis	37th Bar Admission Course
Douglas Robert Eyahpaise	37th Bar Admission Course
Frances Susan Fisher	37th Bar Admission Course
Lesley Alma Lynn Gervais	37th Bar Admission Course
Myron Roman Haluk	37th Bar Admission Course
Jane Margaret Harrison	37th Bar Admission Course
James Kenneth Roy Iliffe	37th Bar Admission Course
Stella Owan Iriah	37th Bar Admission Course

Steven Anthony Karnay	37th Bar Admission Course
Devindra Lalbeharry	37th Bar Admission Course
Robin lara Linden	37th Bar Admission Course
Robert Wallace Lockhart	37th Bar Admission Course
Donna Marie Marchand	37th Bar Admission Course
Glenn Edward Matthews	37th Bar Admission Course
Predrag Narancic	36th Bar Admission Course
Kathleen Ann Niccols	37th Bar Admission Course
Mario Jorge de Sousa Paiva	37th Bar Admission Course
Viola Elizabeth Parvin	37th Bar Admission Course
Sheri Darlene Elizabeth price	37th Bar Admission Course
Gina Rossi	37th Bar Admission Course
Mohamed Sieyf Shahabuddeen	37th Bar Admission Course
Neil Alexander Shalapata	37th Bar Admission Course
Rima Shouli	37th Bar Admission Course
Sunita Siwach	37th Bar Admission Course
Bonnie Mae Tulloch	37th Bar Admission Course
Elisabeth Colson	Transfer, Province of Quebec
Mary Elizabeth Dawson	Transfer, Province of Nova Scotia
Sterling Dietze	Transfer, Province of Quebec
Cindy Ann Morantz	Transfer, Province of Quebec
Saul Schipper	Transfer, Province of Quebec
Bogdan Teofilovici	Transfer, Province of Quebec

TREASURER'S REMARKS

The Treasurer paid tribute to Mr. Robert Carter who passed away on April 27th, 1996.

The appointment of Mr. Abdul Ali Chahbar, a new lay Benchers was announced.

MOTION - Committee Appointment

It was moved by Mr. Crowe, seconded by Ms. Ross THAT Mary Eberts be appointed to the Canadian Bar Association Ontario Law Society Liaison Committee.

Carried

NOTICE OF MOTION - July Convocation

The following Notice of Motion will be presented at the July Convocation.

Moved by: Richmond Wilson

Seconded by: Heather Ross, Marshall Crowe and David Scott

THAT Convocation rescind the decision of March 22nd, 1996 by which the provision for French-speaking panels was deleted from the set of proposed amendments to the Law Society Act.

AGENDA - Committee Reports to be taken as read

It was moved by Mr. Crowe, seconded by Ms. Ross that the Reports listed in paragraph 3 of the Agenda (Reports to be taken as read), except for Item B.3 of the Clinic Funding Committee Report and the Draft Minutes of March 22nd, be adopted.

Carried

Discipline Policy
Draft Minutes - April 1996
Equity in Legal Education and Practice
Legal Aid
Legal Education
Libraries and Reporting
Professional Standards
Specialist Certification Board
Women in the Legal Profession

COMMITTEE REPORTS

DISCIPLINE POLICY COMMITTEE

Meeting of May 9, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE POLICY COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of May, 1996 at 1:30 in the afternoon, the following members being present:

D. Scott (Chair), L. Banack, P. Copeland, E. Delzotto, G. MacKenzie, D. McPhadden, S. Thom.

M. Brown, S. Kerr, G. Macri, M. Seto, R. Tinsley, S. Traviss and J. Yakimovich also attended.

A.
POLICY

- A.1 Discipline Hearings in French
 - A.1.1 In September 1992, Convocation approved a recommendation of this Committee which would have permitted non-Bencher lawyers who are fluent in French to sit on Discipline Panels.
 - A.1.2 This recommendation stemmed from a Subcommittee Report which is attached at A1 to A6.
 - A.1.3 Implementation of this proposal was deferred because an amendment to the Law Society Act was required.
 - A.1.4 The package of legislative reforms considered by Convocation in March, 1996 included a provision which would have given effect to the above-referenced recommendation.
 - A.1.5 During Convocation's debate of the legislative package, an amendment to the package was approved which deleted the provision dealing with the composition of French-speaking panels. As an alternative, Convocation agreed that the issue of providing for Discipline Hearings in French should be dealt with by the development of policy.

- A.1.6 Your Committee recommends that, with the member's consent, the jurisdiction to conduct one member Discipline Hearing panels be utilized in all cases where members request a hearing in French.
- A.2 Criminal defence Counsel - Communicating with Witness/Victim
- A.2.1 At a recent authorization meeting, the Chair and Vice-Chairs considered a case where counsel representing an accused charged with spousal assault contacted the alleged victim of the assault for two purposes:
- a) to obtain her account of the events surrounding the alleged assault; and
 - b) to enquire whether she would consider a proposal which would result in the charge being withdrawn in favour of the accused entering into a peace bond.
- A.2.2 The second purpose of the contact raised some concern as to its propriety in the circumstances of a spousal assault. The contacted party, while undoubtedly a witness, was also a potential victim of abuse who would be at a significant disadvantage when dealing unrepresented with counsel for the accused.
- A.2.3 Your Committee recommends that an item be included in the Advisor informing members of the relevant ethical issues and which provides some guidance to members about how to properly communicate with witnesses in these circumstances.

C.
INFORMATION

C.1. Authorization of Discipline Changes

- C.1.1 The Chair and Vice-Chairs meet each month to consider requests for disciplinary action. The following table summarizes the results of meetings held so far this year and contrasts those results with the same period last year.

Month	Complaints Authorized	ITA's
January	40 (30)	2(1)
February	51 (45)	4(1)
March	21 (45)	2(2)
April	33 (36)	0(3)
TOTAL	145 (156)	8(7)

C.2. Complaints Review Activity

- C.2.1 At the Complainant's request, the Lay Benchers, serving as Complaints Commissioners review complaint matters which staff have closed on the basis that no action is warranted against the member against whom the complaint has been made.

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C.2.2 The following table summarizes the results of matters reviewed by the Complaints Commissioners so far this year.

No of Matters Reviewed	Further Investigation Required	Referred to Chair and Vice-Chairs of Discipline	Referred to Standards or other Law Society Departments	No Further Action Required
44	6	3	2	33

ALL OF WHICH is respectfully submitted

DATED this 24th day of May, 1996

D. Scott
Chair

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

Item A.1.2 - Copy of Subcommittee Report of its meeting on September 10, 1992.

(Marked A-1 - A-6)

THE REPORT WAS ADOPTED

DRAFT MINUTES - April 25 and 26, 1996

THE DRAFT MINUTES WERE ADOPTED

(see Draft Minutes in Convocation file)

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of May 9, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 9th of May, 1996, the following persons being present: Nancy Backhouse (Chair), Nora Angeles, Tom Cole, Paul Copeland, Helene Puccini, Andre Chamberlain, Patricia Hennessey, Jacinth Herbert, Jeunesse Hosein, Judith Keene, Marie Moliner, Margaret O'Sullivan, Ramneek Pooni, Jocelyn Churchill, Mimi Hart and Alexis Singer.

C.
INFORMATION

C.1 Report to the Commission on Systemic Racism in the Ontario Criminal Justice System

C.1.1 The Chair reported on a meeting held on April 25, 1996 where Judge David Cole presented the report to Benchers and asked the Benchers to endorse the report and adopt the recommendations specific to The

Law Society of Upper Canada. The subcommittee reviewing the report will decide how it wishes Convocation to respond to the report. The Equity Committee will have a recommendation for Convocation in June 1996.

C.2 Lawyer Referral Service

- C.2.1 It was suggested that the Lawyer Referral Service be examined to determine how staff fielding calls are briefed with respect to issues around gender and ethnicity. It was agreed that written guidelines would be drafted to provide a policy framework for any recommendation dealing with lawyer referral on the basis of race or ethnicity. The draft of the written guidelines will be sent to the Communications Department and the Women in the Legal Profession Committee for review, comment and approval.

C.3 Canadian Bar Association Study

- C.3.1 The Law Society of Upper Canada, through the Treasurer and various members of the Senior Management Team, have been invited to participate in an inquiry conducted by the Canadian Bar Association into racial equality in the legal profession.
- C.3.2 The Equity in Legal Education and Practice Committee will participate in the inquiry and provide a response on behalf of The Law Society of Upper Canada. The Chair will advise the Working Group that it will provide a submission and appear at the inquiry. Further information will be sought from the Working Group as to the nature of the material it is seeking.

C.4 Model Policies

- C.4.1 The Equity Committee was advised that the Canadian Bar Association has agreed to allow the committee to adopt its model policies. A small budget will be provided to allow the policies to be adapted for the purposes of the Law Society.

C.5 Unplaced Articling Students

The Director of Financial Aid and Placement indicated that while the overall placement rate for articling students is approximately 81% at present the placement rate for students from diverse background or students with disabilities is approximately 65%. The Subcommittee on Articling Placement is preparing a letter to managing partners which sets out the issue and invites them to examine their own recruitment policies. A meeting will be arranged with law firm Articling Committee Chairs to discuss some of the issues around placement of articling students from diverse backgrounds. The committee indicated that it would like to receive more information to determine the breakdown of visible minority group members seeking articles. Thus, the committee will recommend to the Legal Education Committee that the statistical information collected on the Bar Admission Course form seek more information on the breakdown by category of students from diverse backgrounds as set out by Statistics Canada.

C.6 Bicentennial Equity Project

- C.6.1 The committee was advised that funds have not yet been confirmed for the Bicentennial Equity Project. However, assuming that funds will be available, Marie Moliner, Patricia Hennessey, Jacinth Herbert and Dean Marilyn Pilkington will form a subcommittee to develop the project. The first meeting will be in June 1996. It was noted that

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The Honourable Madam Justice Kitley, a former Benchers, has indicated interest in the project as have Benchers David Scott and Stephen Goudge.

C.7 Visible Minority and Aboriginal Forum

A Visible Minority and Aboriginal Forum will be held at Osgoode Hall on June 12, 1996 at 5:30 p.m. The purpose of the Forum is to allow visible minority and Aboriginal lawyers to meet with the Treasurer and the Chair of the Equity in Legal Education and Practice Committee as well as to discuss the Law Society's response to equity issues. A short reception will be followed by a working group session. The event, which will be entitled "Reality Check: Status of Visible Minorities and Aboriginals Within the Profession", will be publicized in the Ontario Reports and Benchers Bulletin.

ALL OF WHICH is respectfully submitted

DATED this 24th day of May, 1996

N. Backhouse
Chair

THE REPORT WAS ADOPTED

LEGAL AID COMMITTEE

Meeting of May 8, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 8th of May, 1996 at 2:00 p.m. the following members being present: Stephen Goudge, Chair, R. Armstrong, H. Burroughs, C. Curtis, M. Eberts, L. Hart, E. Lay, A. Rady, T. Stomp.

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

Jack Martin, Director of the Refugee Law Office and Jan Tilston, director of the Divorce Law Office were also in attendance.

A.
POLICY

A.1 PILOT PROJECTS

The Legal Aid Committee received reports prepared by Jack Martin, Director of the Refugee Law Office and Jan Tilston, Director of the Divorce Law Office. The Committee discussed in depth the caseloads of each office as well as the operating costs.

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It was agreed that this item would be placed on the June agenda for further discussion.

B.
ADMINISTRATION

B.1 UPDATE ON YEAR END FINANCIAL STATEMENT
PREPARED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

The Legal Aid Committee briefly discussed this matter and agreed to bring it back at the June meeting as the Chair and several members of the Committee had to leave to attend the Law Society annual meeting.

B.2 STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE TWELVE MONTHS ENDED MARCH 31, 1996

The Legal Aid Committee received the Statement of Receipts and Disbursements for the Twelve Months ended March 31, 1996 which is attached hereto and marked as SCHEDULE A.

B.3 REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS
FOR THE MONTHS OF MARCH AND APRIL 1996

The Legal Aid Committee received the Report on the payment of Solicitors Accounts for the months of March and April, 1996 which is attached hereto and marked as SCHEDULE B.

B.4 REPORT ON THE STATUS OF REVIEWS IN THE LEGAL
ACCOUNTS DEPARTMENT FOR THE MONTH OF APRIL, 1996

The Legal Aid Committee received the Report on the Status of Reviews in the Legal Accounts Department for the month of April, 1996 which is attached hereto and marked as SCHEDULE C.

ALL OF WHICH is respectfully submitted

DATED this 24th day of May, 1996

S. Goudge
Chair

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

- Item B.-B.2 - Copy of the Statement of Receipts and Disbursements for the Twelve Months ended March 31, 1996. (Schedule A)
- Item B.-B.3 - Copy of the Report on the Payment of Solicitors Accounts for the months of March and April, 1996. (Schedule B)
- Item B.-B.4 - Copy of the Report on the Status of Reviews for the month of April, 1996. (Schedule C)

THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

Meeting of May 9, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Committee met on Thursday, the 9th of May, 1996, at 10:30 a.m.

The following members attended: Philip Epstein (Chair), Gavin MacKenzie (Vice-chair), Larry Banack, Dean Neil Gold (University of Windsor), Allan Lawrence, Dean Marilyn Pilkington (Osgoode Hall Law School), Mohan Prabhu (non-Bencher member) and Helene Puccini. Bencher Vern Krishna, Honorary Bencher Kenneth Jarvis, Jay Rudolph (Chair of the Articling Subcommittee) and the following staff also attended: Marilyn Bode, Katherine Corrick, Brenda Duncan, Mimi Hart, Ian Lebane, Alexandra Rookes, Sophia Sperdakos and Alan Treleaven.

A.
POLICY

A.1 ARTICLING ABRIDGMENTS

A.1.1 The Legal Education Committee recommends a change to the policies for national and international articles, as currently set out in sections 12 and 13 of the *Proposals for Articling Reform Report*, approved by Convocation in October 1990. Current policies for national and international articles, respectively, permit students credit for a maximum of six months of articling elsewhere in Canada and a maximum of four months of articling outside of Canada.

A.1.2 In February the Legal Education Committee and Convocation approved more generous articling abridgments for individuals who have completed a bar admission course or practised law elsewhere in Canada. The amendments were made in the context of the Law Society's new transfer regulations, which were approved by the Lieutenant Governor-in-Council on December 14, 1995.

A.1.3 In light of these changes, it would be consistent to grant credit to students who have articulated elsewhere in Canada or outside Canada.

A.1.4 Recommendation: The Legal Education Committee recommends that

1) students be given credit for a maximum of eight months of articling elsewhere in Canada and a maximum of six months of articling outside of Canada. (Therefore, students who complete national articles would be required to article for four months in Ontario, and students who complete international articles would be required to article for six months in Ontario.)

2) sections 12 and 13 (proposed changes are underlined) be amended, to read as follows:

12.0 NATIONAL ARTICLES

12.1 RECOMMENDATION:

The Articling Director may approve applications for National Articles. An Education Plan must be submitted, and at least four months of the articling period must be completed in Ontario. Written documentation sufficient to meet the criteria for National Articles must be filed.

COMMENTARY:

With the advent of national law firms, there is an emerging demand for expanding the geographic scope of articling placements to other provinces.

Placements may include articling in other provinces if the student completes at least four months of the articling requirement in Ontario. An Education Plan must be submitted by the student, the principal and the lawyer responsible for supervision of the student outside of Ontario. The Education Plan is subject to the approval prescribed in Recommendation 6.1. The monitoring provisions described in Recommendation 8.1 apply.

If the student has articulated in another province and then wishes to begin articling in Ontario, the Articling Director may recognize the overall articling experience as satisfying the criteria for National Articles. The student and lawyer who served as the student's principal in the other province must file with the Articling Director written evidence that the articling experience in the other province was sufficient in educational content to meet the criteria for National Articles.

13.0 INTERNATIONAL ARTICLES

13.1 RECOMMENDATION:

The Articling Director may approve applications for International Articles. An Education Plan must be submitted, and at least six months of the articling period must be completed in Ontario. Written documentation sufficient to meet the criteria for International Articles must be filed.

COMMENTARY:

In instances where Ontario law firms have foreign offices, articling placements may include articling in the foreign office if the student serves at least six months of the articling experience in Ontario. An Education Plan must be submitted by the student, the principal and the lawyer responsible for supervising the student in the foreign office. The Education Plan is subject to the approval described in Recommendation 6.1. The monitoring provisions described in Recommendation 8.1 also apply.

B. ADMINISTRATION

There are no regular business and administration matters to report this month.

C.
INFORMATION

C.1 NATIONAL COMMITTEE ON ACCREDITATION

C.1.1 The role and process of the National Committee on Accreditation are being considered by Gavin MacKenzie, as a one person subcommittee of the Legal Education Committee.

C.1.2 Gavin MacKenzie presented his draft report to the Legal Education Committee. The draft report is now being circulated widely for comments, following receipt of which the draft will be reviewed and submitted to Convocation.

C.2 MANDATORY CONTINUING LEGAL EDUCATION SUBCOMMITTEE

C.2.1 At its March 14, 1996 meeting, the Legal Education Committee authorized the M.C.L.E. Subcommittee to circulate the M.C.L.E. Subcommittee Report for the comment of the profession. To ensure wide awareness of the Report, the Subcommittee did the following:

- 1) Sent copies to all C.L.E. liaisons and County and District Law Association Presidents, County and District law librarians, and individuals who had specifically requested ongoing notification of the Subcommittee's work;
- 2) Placed a Notice to the Profession and Executive Summary of the Report in the April 5, 1996 *Ontario Reports*, reminding the profession of the Subcommittee's work, advising the profession how to obtain copies of the complete Report, and seeking comments by May 3, 1996;
- 3) Provided the Canadian Bar Association Council with copies of the Report for its consideration at the March 29, 1996 Council meeting;
- 4) Provided a summary of the Report and the M.C.L.E. Subcommittee process in the March Benchers Bulletin;
- 5) Sent a copy of the Report to Harrison Arrell, President of County and District Law Presidents' Association, offering to answer any questions, provide information on the Subcommittee's process, and attend the Association's May meeting.

C.2.2 Most of the comments have been brief and have tended to focus on particular aspects of the Report or personal experience with continuing legal education. To a large degree the comments have been similar to those heard throughout the consultation process and reported upon in the M.C.L.E. Consultation Report of November 1995. The comments relate primarily to

- cost of continuing legal education
- concern that those not in practice receive unequal tax treatment on registration for programs compared to those in practice
- the need to improve the accessibility and delivery of continuing legal education to regions outside of Toronto
- details of the M.C.L.E. model
- concern about the applicability of an M.C.L.E. model to lawyers practising outside of the country
- possibility of providing incentives to members to attend continuing legal education programs
- concern that the Law Society not undertake any initiative without consensus of the profession.

C.2.3 The M.C.L.E. Project Director is preparing an additional Appendix to the Report, setting out the nature of the comments received. To date, the comments are consistent with the information and input the Subcommittee had previously received and considered throughout the consultation process. Based on these comments, the Subcommittee does not propose any changes to the Report. If any of the comments yet to come require more discussion, the Subcommittee will ensure these are addressed in the Appendix.

C.2.4 The Legal Education Committee approved presentation of the Report, along with the additional Appendix of comments, to Convocation in June.

C.3 DE-DESIGNATION OF THE BAR ADMISSION COURSE FOR CANADA STUDENT LOANS - UPDATE

C.3.1 The Director of Financial Aid, Mimi Hart, received from the provincial Ministry of Education and Training a memorandum issued in November 1995 by Human Resources Development (Canada) announcing the immediate de-designation of courses offered by provincial law societies.

C.3.2 The principal impact of de-designation is that students in Phase Three of the Bar Admission Course would not be eligible to receive assistance from the Canada Student Loan Program, a program that is available to students in law school, and that currently provides up to 60 % of the financial assistance allocated to qualified students in Phase Three (approximately \$2,475 in 1995). The implications would be broader than just financial assistance during Phase Three, as eligibility for interest-free status on outstanding loans during Phase Three, the ability to use R.E.S.P. funds to finance Phase Three, and eligibility for other tax benefits appear to be contingent upon the student being enrolled in a "designated" program.

C.3.3 On April 12, 1996, the Treasurer received a letter from Jean-Jacques Noreau, Deputy Minister, Human Resources Development Canada, in which he advises that the de-designation of the Law Society of Upper Canada for the purposes of Canada Student Loans has been reconsidered, and confirms that the current practice with respect to Canada Student Loan funding for Bar Admission Course students will remain in place.

C.4 1996-97 ARTICLING PLACEMENT REPORT

C.4.1 As of April 30, 1996, 244 of the 283 students who reported they were unplaced in November 1995 have been contacted by the Society's Placement Office, and have provided an up-date as to their placement status. Thirty-nine students have not responded to several attempts to reach them. Assuming the 39 students who have not responded are unplaced and continuing to seek an articling position, the articling placement situation for the 1996-97 term is as follows:

Total students seeking Articles	1180 (100 %)
Total students with Articles	949 (80.4%)
Total students seeking Articles to commence by September 1, 1996	231 (19.6%).

- C.4.2 At April 25, 1995, the Placement Office was aware of 179 students (15% of the class) who continued to seek articles. By December 31, 1995, 98.5% of students seeking articles in the 1995-96 year had secured a position. The situation in 1996-97 is similar to the situation in 1994-95, when at April 25, 1994 there were 222 students (15% of the class) without articles. By December 31, 1994, 99% of students had secured a position.
- C.4.3 Up-to-date statistics will be available at Convocation.
- C.4.4 Programs to assist unplaced students are underway, including advertising and promotion of the unplaced students to the profession. The Articling Subcommittee's special Sub-subcommittee to review Articling Placement policies and programs continues to meet.
- C.5 CONTINUING LEGAL EDUCATION REPORT ON COURSES
- C.5.1 The Continuing Legal Education Report, prepared by the Director of Continuing Legal Education, Brenda Duncan, is attached. (pages 1 - 3)

ALL OF WHICH is respectfully submitted

DATED this 24th of May, 1996

P. Epstein
Chair

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

Item C.-C.5.1 - Copy of the Continuing Legal Education Report. (pages 1 - 3)

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE

Meeting of May 9, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your committee met on Thursday, the 9th of May, 1996 at 9:00 a.m., the following benchers being present: Mary Eberts (Chair), Michael Adams (Vice-chair), Marshall Crowe, Jane Harvey, Vern Krishna, Barry Pepper, Richmond Wilson, Bradley Wright. Also in attendance were Law Society staff Richard Tinsley, Dana Dvorak and Maureen Hyland, Wayne Mowat.

A.
POLICY

There were no policy items.

24th May, 1996

B.
ADMINISTRATION

There were no administration items.

C.
INFORMATION

Copyright

The Chair reported on Bill C-32, the new Copyright Act. There is nothing in the proposed amendments which will have an effect on the ongoing litigation. The Chair also reported on the meetings of the Copyright Committee of the Federation of Law Societies (held by teleconference). The Federation's committee has recommended to the Director of the Federation that the Federation make representations before the Standing Committee with respect to Bill C-32.

A copy of material relating to Bill C-32 is attached.

Budget & Technology Sub-Committee

The Chair reported on the work of the Budget and the Technology Sub-Committees both of which include members from the County & District Law Presidents' Association.

The Budget Sub-Committee is trying to develop a funding formula for the County & District law library grants. The Sub-Committee has had two conference call meetings and work is progressing.

The Technology Sub-Committee has also been meeting by way of teleconference calls. A work plan (copy attached) has been developed and a survey has been sent to each county and district requesting information from the local law library on existing equipment and related technology and its uses.

ALL OF WHICH is respectfully submitted

DATED this 24th day of May, 1996

M. Eberts
Chair

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

Item C. - Copy of material on Bill C-32 - the new Copyright Act.

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

Meeting of May 9, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of May, 1996 at 1:30 p.m., the following members being present: Heather J. Ross (Vice-Chair), W. Michael Adams, Nora Angeles, Ronald W. Cass, Thomas E. Cole, Michael Somers, Hilary Warder-Abicht, Richmond C.E. Wilson.

Also Present: N. Amico, S. Carlyle, B. Kelly, S. McCaffrey, P. Rogerson.

A.

POLICY

A.1. RULES OF PROFESSIONAL CONDUCT - RULE 28 - DRAFT BULLETIN #5

- A.1.1. The Equity in Legal Education and Practice Committee publishes bulletins intended to provide guidance to members of the public on Rule 28 (Discrimination) of the Rules of Professional Conduct. In April, 1995, Convocation approved a recommendation of that Committee that all such bulletins be circulated for consultation to, *inter alia*, the Professional Standards Committee, before consideration by Convocation and ultimately distribution to the profession.
- A.1.2. Your Committee was asked by The Equity in Legal Education and Practice Committee to consider a copy of Draft Bulletin #5 and approve the draft bulletin, or identify any questions or comments regarding the draft bulletin so that same could be communicated to the Equity Committee by May 10, 1996.
- A.1.3. Your Committee received the item as an addendum to the agenda at its meeting and did not feel prepared to approve the Bulletin unless it had an opportunity to review it fully. Your Committee will be reconvening by teleconference within the next two weeks to discuss the draft Bulletin and will report its questions or comments to the Equity Committee thereafter.

B.

ADMINISTRATION

B.1. REINSTATEMENT ON LAWYER REFERRAL

- B.1.1. A lawyer participating in the Practice Review Programme has asked your Committee to recommend his reinstatement on the Lawyer Referral Service roster. The lawyer was authorized to participate in the Programme in June 1995, based on a referral from a Complaints Review Commissioner. At the time of authorization, the lawyer had received 17 complaints and 6 potential LPIC claims since 1991. The lawyer has accumulated an additional 2 complaints since authorized.

- B.1.2. In October 1995, your Committee had considered an earlier request from the lawyer to be reinstated on the Lawyer Referral Service. Your Committee reviewed his Law Society's complaints and claims history and his submissions, and decided to defer consideration of the matter pending receipt of the reviewer's report.
- B.1.3. The reviewer met with the lawyer on December 5, 1995 and completed the review on February 12, 1996. The reviewer found that there were no apparent office management deficiencies, but did have concerns regarding deficient client communications which he addressed in eight detailed recommendations of his report.
- B.1.4. The Committee reviewed the lawyer's recent Law Society profile of complaints and claims, his submissions and the reviewer's recommendations.
- B.1.5. Given the volume and nature of his complaints, the concerns of the reviewer, and the apparent connection between the inadequacies identified by the reviewer and the types of complaints received, your Committee decided against recommending that the lawyer be restored on the Lawyer Referral Service at this time.

C.
INFORMATION

- C.1. PROPOSED AMENDMENTS TO THE LAW SOCIETY ACT - POLICY IMPLICATIONS
- C.1.1. At its March meeting, Convocation approved (with some amendments) a package of reforms to the *Law Society Act*, many of which affect and, in some cases, significantly alter, the manner in which investigations, competency and capacity hearings are conducted.
- C.1.2. The package was recently forwarded to the Ministry of the Attorney General for formal initiation of the legislative reform process.
- C.1.3. At its meeting in April, the Discipline Policy Committee established a task force, chaired by Gavin MacKenzie, to consider whether policy or other initiatives need to be developed in order to implement effectively proposals relating to that committee's mandate.
- C.1.4. Similarly, it will be necessary to develop policies and procedures to implement those amendments within the mandate of the Professional Standards Committee. A list of matters which may require consideration was presented to your Committee.
- C.1.5. In order to ensure consistency of approach, and to address most effectively the issues raised by the reforms, Gavin MacKenzie invited members of your Committee to join the task force he is chairing.
- C.1.6. The Chair of your Committee will therefore appoint members to the task force.

C.2. PRACTICE ADVISORY SERVICE - STATUS REPORT

- C.2.1. The Service dealt with 848 calls during the month of February; more than one quarter of which dealt with the Rules of Professional Conduct. A higher proportion of calls than usual came from within Metro Toronto as opposed to the rest of the Province. Members called in 1995 were the most frequent users in February. In March there were 709 calls, most of which came from members called in 1996.
- C.2.2. During the month of March the Director attended a meeting of the Practice Advisors from across the United States and Canada in Chicago, as a task force of the ABA Law Practice Management Section. The Practice Advisory services of Alberta, British Columbia and Ontario are the longest-running services in North America.
- C.2.3. Rosemary Shoreman, the Systems Adviser for the Professional Standards Department and the Practice Advisory Service, attended the ABA Tech Show in Chicago to keep current with the developments in the computer field for lawyers.
- C.2.4. In March the Director also attended a two-day workshop on how to run a workshop, given by Hugh Phillips from Edmonton. The information learned will be passed on to Sue McCaffrey and Rosemary Shoreman to benefit our presentation of the monthly Start-Up Workshops.

C.3. DEPARTMENTAL REPORT - PROFESSIONAL STANDARDS

- C.3.1. In April, staff of the Professional Standards Department were scheduled to attend at the offices of 46 lawyers across the province, including 1 appointment in Northern Ontario when winter storm warnings were in effect, on April 26, and 1 in "tornado country" on April 24.
- C.3.2. Of the 163 lawyers presently participating in the Programme, 5% were authorized to participate in 1989, 3.6% in 1990, 5.5% in 1991, 8% in 1992, 10% in 1993, 17% in 1994, 35% in 1995 and 16% in 1996.
- C.3.3. At the March review panel, Benchers Laura Legge and Tom Cole met with 3 lawyers participating in the Programme. Gavin MacKenzie and Marshall Crowe sat on a review panel in April where the practices of 4 lawyers were reviewed. In every case additional recommendations were made to assist these lawyers in the improvement of their practices. The assistance of these Benchers is greatly appreciated, by both staff and the participating lawyers.
- C.3.4. Checklists on residential real estate, family law and wills and estates were distributed to members of the profession who indicated, on their fees forms, that 10% or more of their practices were in these fields. In addition, the Professional Standards Department receives on a daily basis requests from members and education facilities for additional copies. The feedback to date has been overwhelmingly positive, and members have also taken the time to advise of errors, uncertainties, and additions to be addressed by revisions to the checklists.

24th May, 1996

- C.3.5. Those staff at the Law Society who are contacted by the media for interviews recently had the benefit of a day-long training program to improve their media skills. Barry McLoughlin Associates Inc. taught, through demonstrations and simulations, how to plan and prepare for media interviews, tactics for handling difficult questions and avoiding out-of-context quotes, and verbal and non-verbal skills that assist in communicating positively on the Law Society's behalf.

ALL OF WHICH is respectfully submitted

DATED this 24th day of May, 1996

Chair
D. Millar

THE REPORT WAS ADOPTED

SPECIALIST CERTIFICATION BOARD

Meeting of May 9, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday the 9th of May 1996 at nine o'clock in the morning, the following members being present: R. Manes (Chair), L. Banack, J. Callwood, D. Murphy, M. Pilkington, and G. Sadvari. C. Giffin and D. Moreira of the Law Society, were also present.

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

The Family Law Specialty Committee met on Monday, the 15th day of April, 1996 at nine- thirty in the morning.

The Labour Law Specialty Committee met on Monday, the 22nd day of April, 1996 at five o'clock in the afternoon.

A.
POLICY

A.1. SPECIALIST APPLICANTS AND THE PRACTICE REVIEW PROGRAMME

- A.1.1. Current policy states that when a specialist applicant participates in the Professional Standards Department's Practice Review Programme, the certification process will be put in abeyance pending completion of the Programme.

- A.1.2. In circumstances where a lengthy period of time has passed since an applicant's original application was submitted, your Board agreed that it may reserve the right to request that the applicant submit a new application with current references.

A.2. RELEASE OF LPIC INFORMATION

- A.2.1. On applications where information is required on errors and omissions claims, your Board approved the use of a consent form to be signed by an applicant to allow LPIC to release requested claims information to the Program office or to the Professional Standards Department.

B.
ADMINISTRATION

No items.

C.
INFORMATION

C.1. CERTIFICATION OF SPECIALISTS

- C.1.1. Your Board is pleased to report the certification of the following lawyer as a Civil Litigation Specialist:

J. Gardner Hodder (of Toronto)

- C.1.2. Your Board is pleased to report the certification of the following lawyers as Family Law Specialists:

Suzette Blom (of Toronto)
Denis Burns (of London)
Terry Caskie (of Toronto)

- C.1.3. Your Board is pleased to report the certification of the following lawyers as Labour Law Specialists:

Barrie Chercover (of Toronto)
Michael Failes (of Toronto)

- C.1.4. Your Board is pleased to report the certification of the following lawyer as a Workers' Compensation Law Specialist:

David Brady (of Toronto)

C.2. RECERTIFICATION OF SPECIALISTS

- C.2.1. Your Board is pleased to report the recertification for an additional five years of the following lawyer as a Civil Litigation Specialist:

Michael Head (of Pickering)

24th May, 1996

C.2.2. Your Board is pleased to report the recertification for an additional five years of the following lawyers as Family Law Specialists:

Philip Epstein (of Toronto)
Ian Fisher (of Windsor)
Gary Steinberg (of Ottawa)

ALL OF WHICH is respectfully submitted

DATED this 24th day of May, 1996

R. Manes
Chair

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of May 9, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 9th of May, 1996, at 11:30 a.m., the following members being present: M. Eberts (in the Chair), M. Adams, N. Angeles, N. Backhouse, P. Hennessy.

Staff: A. Brockett, S. McCaffrey, M. Seto, A. Singer, S. Sperdakos, E. Spears.

A.
POLICY

No items to report.

B.
ADMINISTRATION

No items to report.

C.
INFORMATION

C.1. MONITORING THE PROGRESS OF WOMEN AND OTHER MINORITY GROUPS IN THE
LEGAL PROFESSION: MEMBER INFORMATION FORM

C.1.1. The Committee has been exploring using the Law Society's membership data to monitor the progress of women and other minority groups in the legal profession (a recommendation of the Canadian Bar Association Task Force on Gender Equality in the Legal Profession). Currently, the Law Society gathers data from its members through use of an "Annual Membership Fee Form". In March 1996, the Committee was alerted to a project (of the Law Society's Audit and Investigation Department) to develop a new "Member Information Form" to replace the existing Annual Membership Fee Form. The creation of the new form was presented to the Committee as an opportunity to ensure that the Law Society obtains from its members the information necessary to effectively monitor the progress of women and other minority groups in the legal profession. The Committee retained Dr. Fiona Kay (Assistant Professor of Sociology, University of British Columbia) to draft questions to include in the new form.

C.1.2. In April 1996, the Committee received a memorandum from Dr. Kay containing suggestions for changes to the Annual Membership Fee Form. The Committee began to consider the memorandum at its meeting on April 11.

C.1.3. In May 1996, the Committee received an additional report from Dr. Kay, addressing comments which the Committee had made in April concerning the suggestions contained in the memorandum. At its meeting on May 9, the Committee completed its consideration of Dr. Kay's memorandum and fully considered Dr. Kay's additional report.

C.1.4. The amendments to the Annual Membership Fee Form, which the Committee believes are necessary if membership data are to be used to monitor the progress of women and other minority groups in the legal profession, will be sent to the Audit and Investigation Department with a request that they be incorporated into the new Member Information Form. The Committee will review the new Member Information Form at a future date.

C.2. REQUALIFICATION

C.2.1. On March 7, 1996, the Committee met with Derry Millar, Chair of the Professional Standards Committee, and the staff committee appointed to prepare proposals for implementing the requalification policy, to discuss the requalification policy. A memorandum addressing various aspects of, and raising questions about, the requalification policy was before the Committee. The Committee's discussion focussed on the requirements that members seeking to requalify will have to meet and the criteria that should be used to determine whether a member is making substantial use of legal skills on a regular basis.

24th May, 1996

- C.2.2. At its meeting on May 9, 1996, the Committee received a second memorandum addressing the requalification policy. The memorandum summarized the Committee's "recommendations" to date on the issues of what the requalification requirements should be and what criteria should be used to determine whether a member is making substantial use of legal skills. The considerations underlying the Committee's recommendations were also set out. Finally, the memorandum invited the Committee to consider the matter of the pre-emptive regime.
- C.2.3. The Committee agreed that the memorandum should be considered by the group of people present at the March 7 meeting. It was further agreed that the group should resolve all outstanding issues relating to the requalification policy and report to the Committee on its work once it has been completed.

ALL OF WHICH is respectfully submitted

DATED this 24th day of May, 1996

Chair
H. Sachs

THE REPORT WAS ADOPTED

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FINANCE AND ADMINISTRATION COMMITTEE

Meeting of May 9, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of May, 1996 at 10:30 a.m., the following Benchers being present: R.W. Murray (Chair), T. Cole, M. Crowe, E.L. DelZotto, A. Feinstein, J.D. Harvey, D.H.L. Lamont, R. Manes, P.B.C. Pepper, and H.J. Ross. Also in attendance were J.T. Saso, W.D. Tysall, and D. Carey

B.
ADMINISTRATION

1. FINANCIAL STATEMENTS FOR THE THREE MONTHS ENDED MARCH 31, 1996

The Chief Financial Officer presented the Financial Statements and a highlights memorandum for the General Fund and the Lawyers' Fund for Client Compensation for the three months ended March 31, 1996 (pages 3-13).

Approved

2. APPOINTMENT OF THE AUDITOR FOR THE FINANCIAL YEAR ENDING DECEMBER 31, 1996

Pursuant to subrule 34(5) and Rule 6 of the Rules made under subsection 62(1) of the *Law Society Act*, the Committee was asked to recommend to Convocation the appointment of Coopers & Lybrand, Chartered Accountants, as the Society's public accountant to examine and audit the accounts and transactions of the Society for the financial year ending December 31, 1996.

Approved

1. CHEQUE SIGNING AUTHORITY AND BANKING RESOLUTION

A policy to implement a new cheque signing authority, prepared pursuant to a recommendation in the Auditor's management letter, is attached along with a banking resolution (pages 14-18).

The Committee was asked to approve the change to the policy and the banking resolution.

Approved

24th May, 1996

C.
INFORMATION

1. SUSPENSION OF MEMBERS FOR NON-PAYMENT OF ANNUAL FEES

a) Annual Fee

As of May 1, 1996, 294 members were suspended for non-payment of the Annual Fee. Of those suspended members, 114 were reinstated prior to the printing cut off date for the Benchers Bulletin. Accordingly, 180 names of suspended members will be published in the April 1996 edition of the Benchers Bulletin.

Approximately 500 members are currently making payments under special payment plans.

b) E & O Levy Premium

The Chief Financial Officer of LPIC advised the Law Society that LPIC will not be submitting a suspension list for the 1996 levy premium until May 1996 for a suspension date of June 1, 1996. One member was suspended as of May 1, 1996 for defaulting on a special payment plan for the 1995 levy premium.

ALL OF WHICH IS respectfully submitted

DATED this 24th day of May, 1996

R. Murray
Chair

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

- Item B.-1. - Copy of the Financial Statements and memorandum from Ms. Wendy Tysall to the Chair and Members of the Finance and Administration Committee dated May 2, 1996 re: 1996 First Quarter Financial Statement Highlights.
(pages 3 - 13)
- Item B.-3. - Copy of the policy on new Cheque Signing Authority and banking resolution.
(pages 14 - 18)

THE REPORT WAS ADOPTED

MOTION TO SUSPEND - Failure to pay Annual Fees

It was moved by Mr. Crowe, seconded by Mr. Finkelstein THAT the rights and privileges of each member who has not paid the annual membership fee, and whose name appears on the attached list be suspended from May 31, 1996 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)

MOTION TO SUSPEND - Failure to pay Errors & Omissions Premium Levy

It was moved by Mr. Crowe, seconded by Mr. Finkelstein THAT the rights and privileges of each member who has not paid the Errors & Omissions premium levy, and whose name appears on the attached list be suspended from May 31, 1996 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)

AGENDA - Reports or Specific Items Requiring Convocation's Consideration and Approval and Reports to be spoken to

PROFESSIONAL CONDUCT COMMITTEE

Meeting of April 11, 1996

Mr. Finkelstein presented the April Report of the Professional Conduct Committee re: ADR Rule, for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of April, 1996 at three o'clock in the afternoon, the following members being present: R. Armstrong (in the Chair), L. Banack, K. Braid, A. Lawrence, G. MacKenzie, T. Stomp and G. Swaye. The following staff members were present: M. Devlin, S. Traviss and F. Smith.

A.
POLICY

1. ADR IMPLEMENTATION SUB-COMMITTEE'S
RECOMMENDATIONS ADOPTED BY CONVOCATION
ON APRIL 28, 1995 - NEED TO AMEND THE RULES
OF PROFESSIONAL CONDUCT TO REFLECT THIS

History

Convocation adopted the recommendations of the ADR Implementation Sub-Committee (a sub-committee of the Research and Planning Committee) on April 28, 1995.

One of the recommendations was that a new Rule of Professional Conduct be implemented to require lawyers to canvass ADR options with clients.

3. The ADR Implementation Sub-Committee's proposed rule is set out in Option

This would be Rule 30 if adopted.

The Professional Conduct Committee has at two separate meetings discussed the recommendation that there should be a separate rule of professional conduct that would address ADR. The discussion at both meetings was very spirited.

At the January 1996 meeting the Professional Conduct Committee recommended that a sub-committee be created to look further into the matter. The following benchers served on the sub-committee: Larry A. Banack; Gavin A. MacKenzie; Clayton C. Ruby and Gerald A. Swaye, Q.C. One member of the Professional Conduct Committee sent a very helpful redraft of suggested Rule 30 which is set out in Option 4.

The sub-committee met once. Mr. Ruby could not be present.

The sub-committee concluded that a separate rule was not needed. Instead a new commentary could be added to Rule 10 (The Lawyer as Advocate). It would be Commentary 6A and would read:

Alternative Dispute Resolution ("ADR")

6A. In the many cases in which alternative dispute resolution would be preferable to the litigation process, then the lawyer should so inform the client and, if so instructed, take steps to pursue this route. Should counsel for the opposing party suggest the use of ADR, the lawyer is obligated to discuss this with the client so the appropriate response can be made.

The sub-committee was of the opinion that this amendment in a succinct fashion covers much of what was in the proposed Rule 30.

Recommendation

The Committee discussed the sub-committee's draft and considered that it should put forward to Convocation various options:

- (1) That the sub-committee's recommendation be adopted by adding Paragraph 6A to the Commentary to Rule 10:

In the many cases in which alternative dispute resolution would be preferable to the litigation process, then the lawyer should so inform the client and, if so instructed, take steps to pursue this route. Should counsel for the opposing party suggest the use of ADR, the lawyer is obligated to discuss this with the client so the appropriate response can be made.

and that the Commentary under Rule 3 (Advising Clients) be amended by adding a new commentary (Commentary 10). It would read:

In the many cases in which alternative dispute resolution would be preferable to the litigation process, then the lawyer should so inform the client and, if so instructed take steps to pursue this route.

- (2) That the sub-committee's draft paragraph 6A be revised to read:

The lawyer should consider the appropriateness of ADR to the resolution of issues in every case and, if appropriate, the lawyer should inform the client of ADR options and, if so instructed, take steps to pursue those options.

Note: Motion, see page 211

- (3) That Convocation adopt as Rule 30 the draft rule recommended by the ADR Implementation Sub-Committee in April 1995:

Responsibility to Advise Clients of Alternatives to Litigation

1. The lawyer must consider alternatives to court proceedings such as arbitration and mediation, that are available to resolve disputes.
2. The lawyer has a duty to inform the client about such alternative dispute resolution mechanisms.
3. The lawyer has a duty to respond within a reasonable time to proposals by an opposing party or counsel for the use of alternative methods of dispute resolution.
4. The lawyer has a duty to inform the client of any proposal from an opposing party concerning alternative dispute resolution and, if the proposal is rejected, the lawyer must provide reasoned advice as to why alternative dispute resolution is inappropriate.
5. Methods of alternative dispute resolution should be used in good faith to advance the interests of the client and should not be employed to delay a just resolution of the issues.

Commentary

The public needs alternatives to litigation. In appropriate cases, the legal profession is obliged to assist clients to consider such alternatives. The rule requires lawyers to inform clients of such alternatives in order to assist clients in avoiding the costs and delays associated with traditional methods of dispute resolution.

Alternatives to traditional methods of dispute resolution are not restricted to arbitration and mediation. There is a wide spectrum of alternatives to dispute resolution which should be canvassed by the lawyer when advising clients.

It is good practice for the lawyer to give advice concerning alternative dispute resolution in writing to the client.

- (4) That Convocation adopt as Rule 30 a Professional Conduct Committee member's redraft:

24th May, 1996

Alternative Dispute Resolution

1. The lawyer has a duty to inform the client about the availability of alternative dispute resolution mechanisms available to resolve disputes.
 2. Upon receipt of a proposal from an opposing party or counsel to use alternative dispute resolution mechanisms in an effort to resolve the dispute between the parties, the lawyer has a duty:
 - (a) to inform the client of the proposal;
 - (b) to advise the client on the merits of the proposal, if any, in the circumstances or, in the alternative, to advise the client to obtain advice concerning the advantages and disadvantages of the mechanisms proposed; and
 - (c) to respond within a reasonable time to the proposal received from the opposing party or counsel;
 3. Alternative dispute resolution mechanisms, when used by the lawyer, should be used in good faith to advance the interests of the client.
- (5) That Convocation leave the status quo as such and that there be no change to the Rules of Professional Conduct.

The Committee requests Convocation to consider the five options and choose one that it regards as appropriate.

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1996

N. Finkelstein
Chair

A debate followed.

Convocation took a brief recess at 10:50 a.m. and resumed at 11:10 a.m.

Professional Conduct Committee Report - cont'd

It was moved by Ms. Curtis, seconded by Mr. Swaye that Option #4 be adopted re: that Convocation adopt as Rule 30 a Professional Conduct Committee member's redraft:

Alternative Dispute Resolution

1. The lawyer has a duty to inform the client about the availability of alternative dispute resolution mechanisms available to resolve disputes.

24th May, 1996

2. Upon receipt of a proposal from an opposing party or counsel to use alternative dispute resolution mechanisms in an effort to resolve the dispute between the parties, the lawyer has a duty:
 - (a) to inform the client of the proposal;
 - (b) to advise the client on the merits of the proposal, if any, in the circumstances or, in the alternative, to advise the client to obtain advice concerning the advantages and disadvantages of the mechanisms proposed; and
 - (c) to respond within a reasonable time to the proposal received from the opposing party or counsel;
3. Alternative dispute resolution mechanisms, when used by the lawyer, should be used in good faith to advance the interests of the client.

Lost

It was moved by Mr. MacKenzie, seconded by Mr. Scott that Option #1 be adopted re: that the sub-committee's recommendation be adopted by adding Paragraph 6A to the Commentary to Rule 10:

In the many cases in which alternative dispute resolution would be preferable to the litigation process, then the lawyer should so inform the client and, if so instructed, take steps to pursue this route. Should counsel for the opposing party suggest the use of ADR, the lawyer is obligated to discuss this with the client so the appropriate response can be made.

and that the Commentary under Rule 3 (Advising Clients) be amended by adding a new commentary (Commentary 10):

In the many cases in which alternative dispute resolution would be preferable to the litigation process, then the lawyer should so inform the client and, if so instructed take steps to pursue this route.

Lost

It was moved by Mr. Finkelstein, seconded by Mr. Gottlieb that Option #2 be adopted re: that the sub-committee's draft paragraph 6A be revised to read:

The lawyer should consider the appropriateness of ADR to the resolution of issues in every case and, if appropriate, the lawyer should inform the client of ADR options, and, if so instructed, take steps to pursue those options.

Carried

It was moved by Mr. Bobesich, seconded by Mr. Wilson that Option #5 be adopted re: that Convocation leave the status quo as such and that there be no change to the Rules of Professional Conduct.

Not Put

THE REPORT AS AMENDED WAS ADOPTED

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CLINIC FUNDING COMMITTEE

Meeting of May 9, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CLINIC FUNDING COMMITTEE begs leave to report:

Your Committee met on April 11 and May 9, 1996. Present were: Paul Copeland, Chair, Harriet Sachs, Gordon Wolfe, Pamela Mountenay-Giffin, Mark Leach. Also present: Joana Kuras, Clinic Funding Manager.

A.

POLICY

Nil

B.

ADMINISTRATION

Pending designation of the 1996/97 budget by the Attorney General, the Clinic Funding Committee recommends Convocation's approval of funding allocations, as follows:

B.1 Summer Students 1996

Correctional Law Project (4 students) - up to	\$ 28,000
Parkdale Community Legal Services (20 students) - up to	139,000
Legal Assistance of Windsor (12 students) - up to	84,000
Kensington-Bellwoods Community Legal Services (12 students) - up to	<u>84,000</u>
	<u>\$335,000</u>

B.2 Special Education/Outreach Funds 1995/96

The Clinic Funding Committee is the recipient of funds from the Department of Justice Access to Legal Information Fund to provide public legal information services in Ontario. These funds can only be used for production and distribution of legal information materials by Community Legal Education Ontario, and other individual clinic projects. The Clinic Funding Committee recommends Convocation's approval of up to \$65,409 for individual projects set out in Schedule A, and \$106,783 for Community Legal Education Ontario.

Note: Item deferred

B.3 Financial Statement 1995/96

Attached as Schedule B is an expenditures report for the clinic system for the period April 1, 1995 to March 31, 1996.

Note: Item deferred

C.
INFORMATION

Nil

ALL OF WHICH is respectfully submitted

Paul Copeland
Chair

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

- Item B.2 - Summary of Funded Special Outreach Proposals for 1995/96.
(Schedule A)
- Item B.3 - Copy of Expenditure Report for the clinic system for the period
April 1, 1995 to March 31, 1996. (Schedule B)

It was moved by Mr. Wilson, seconded by Mr. Gottlieb that B.1 be approved and Items B.2 and B.3 be deferred until further information is provided by the task force established to determine what proper monitoring functions should be made including amendments to the Regulation.

Carried

THE REPORT WITH THE EXCEPTION OF B.2 AND B.3 WAS ADOPTED

AGENDA - Additional Matters Requiring Debate and Decision by Convocation

ADR IMPLEMENTATION REPORT

The ADR Implementation Report was presented by Mr. Lawrence for Convocation's approval.

LAW SOCIETY OF UPPER CANADA

TASK FORCE TO REVIEW IMPLEMENTATION OF
REPORT OF THE SUBCOMMITTEE ON DISPUTE RESOLUTION (1993)

REPORT TO CONVOCATION

April 26, 1996

The Honourable Allan Lawrence, Q.C.

LAW SOCIETY OF UPPER CANADA

TASK FORCE TO REVIEW IMPLEMENTATION OF
REPORT OF THE SUBCOMMITTEE ON DISPUTE RESOLUTION (1993)
April 26, 1996

SUMMARY OF REPORT TO CONVOCATION

- A. The Report of the Dispute Resolution Subcommittee (*Alternatives*) was adopted by Convocation in February 1993. The Report strongly endorsed the use of alternatives to litigation and made specific recommendations for changes to Law Society programs.
- B. General recommendations that the Law Society employ alternative to litigation whenever appropriate are reflected in a number of initiatives in the Complaints department and LPIC.
- C. LPIC is satisfied that lawyers who carry on an ADR practice while maintaining their insurance with LPIC will be covered by the policy. Those who take the position that they are not practising law may opt out of the programs, and are advised by LPIC to seek coverage for their ADR activities.
- D. Recommendations regarding the Specialist Certification Program have been delayed as the process of reviewing the program has been under way. The standards for certification in family law make provision for ADR experience.
- E. Education recommendations have been effectively implemented greatly increasing the ADR content of the Bar Admission Course and Continuing Legal Education programs.
- F. The Ontario law schools are giving greater attention to ADR in their programs.
- G. Professional Conduct recommendations have led to much consideration and consultation by the Implementation Subcommittee. The latest draft revisions of the Rules of Professional Conduct have been considered by the Professional Conduct Committee. Its report will be considered by Convocation the same day as this report.
- H. The Public Information Recommendations included the wide distribution of the Report to the profession and a number of recommendations affecting programs through which the Law Society communicates with the public. The recommendations for making the profession aware of the report were fully implemented. The recommendations aimed at the public were less successful.

- I. Upon consideration of the implementation of the Report, this Task Force requests that Convocation direct the Chief Executive Officer of the Law Society to:

1. Continue to review and develop programs within the Law Society to take advantage of the benefits of alternative dispute resolution (eg. in the Complaints Department, LPIC, and other departments).
2. Draw up and execute a strategy as part of ongoing employee training whereby employees of the Law Society to whom familiarity with developments in alternative dispute resolution would be useful will be given access to education programs and information on ADR.
3. Maintain and, where appropriate, increase the ADR content in the Bar Admission Course and Continuing Legal Education programs.
4. Continue to encourage the Ontario law schools to give greater prominence to ADR in their programs.
5. Formulate a workable communications strategy for dissemination to the profession and the public regarding developments in alternative dispute resolution. For example, should Convocation adopt a new Rule of Professional Conduct, then a communications plan should be developed to make the profession aware of it. The CEO should report back as to whether there is a workable role for the Law Society in making the public aware of ADR.
6. Continue to seek the co-operation and assistance of other organizations (both within and outside the legal profession) in promoting the use of ADR by the public and the profession.
7. Enter into discussions and report back to Convocation regarding the feasibility and possible cost savings associated with increased use of ADR in the Legal Aid system.
8. Report back to Convocation as to the status of implementation in September 1996 or as soon thereafter as Convocation's agenda allows.

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LAW SOCIETY OF UPPER CANADA

TASK FORCE TO REVIEW IMPLEMENTATION OF
REPORT OF THE SUBCOMMITTEE ON DISPUTE RESOLUTION (1993)

REPORT TO CONVOCATION
April 26, 1996

The Task Force

The Report of the Dispute Resolution Subcommittee (*Alternatives*) was adopted by Convocation in February 1993. Since 1993, a committee of benchers, chaired by Mr. Allan Lawrence, Q.C. has been responsible for overseeing the implementation of the report.

In November 1995, the Research and Planning Committee concluded that under the policy-governance model, it was inappropriate for benchers to be charged with continuing responsibility for ensuring implementation of the report. Convocation adopted the following recommendation:

Your Committee recommends that Convocation,

- (a) establish a short-term task force to,
 - (i) outline the extent to which the recommendations in the Dispute Resolution Report have been implemented, and
 - (ii) identify the recommendations that still need to be implemented;
- and
- (b) instruct the Chief Executive Officer to implement the recommendations and report back to Convocation.

The Treasurer requested that Mr. Allan Lawrence act as the Task Force to review the rules. Simon Hodgett supplied staff assistance to Mr. Lawrence.

The following staff assisted the Task Force by responding to inquiries: Carol Giffin (Administrator, Specialist Certification), Malcolm Heins (President, LPIC), Scott Kerr (Assistant Secretary, Complaints), Patricia Rogerson (Director, Practice Advisory Service), Alan Treleaven (Director, Education) and Gemma Zecchini (Director, Communications).

Alternatives: The Report of the Dispute Resolution Subcommittee

The Dispute Resolution Subcommittee was a subcommittee of the Research and Planning Committee. It was appointed in April 1991 to conduct a series of consultations regarding ADR techniques and the role of the Law Society with respect to them. It was asked to make specific recommendations concerning insurance implications of ADR, impact on the Rules of Professional Conduct, education and ADR and the role of the Law Society with respect to public information about ADR.

Mr. Lloyd Brennan, Q.C., now Mr. Justice Brennan, chaired the Subcommittee having succeeded Ms. Sandra Chapnick upon her appointment to the bench in June 1991.

The thrust of the Report was that alternative dispute resolution is part of a spectrum of techniques for dispute resolution. The lawyer's traditional tools of negotiation and litigation are at opposing ends of that spectrum. Recognizing this integrated approach to the issue, the Subcommittee rejected referring to alternative dispute resolution and termed itself the Subcommittee on Dispute Resolution.

The Subcommittee proceeded on the basis of the following fundamental principles:

- *The Law Society governs the legal profession in Ontario in the public interest. The Society must ensure that competent and appropriate legal services are provided by its members.*
- *Alternative dispute resolution is presenting new methods for the resolution of disputes. The increasing demand for these services is happening independently of the Law Society.*
- *Lawyers are and will remain providers of dispute resolution services to the public. It is important that the Law Society encourage its members to provide alternative dispute resolution services, where this would enhance access to justice, and ensure that its members who practise in this area do so competently.*

The Subcommittee carried out a number of initiatives to gauge reaction to use of alternative methods of dispute resolution. In January, 1992, Manifest Communications and Decima carried out a survey of the profession and the public. The survey included a number of questions regarding alternative dispute resolution and showed strong support for it in both the public and the profession. The Subcommittee placed advertisements in the *Ontario Reports* inviting responses in writing and by telephone. These comments were incorporated into the Report.

The Subcommittee concluded that the Law Society should strongly endorse the use of alternatives to litigation. It went on to recommend changes to programs at the Society to adjust to the growing importance of alternative methods of dispute resolution. It made recommendations concerning use of alternative dispute resolution in the Law Society's own departments, additions to the Law Society's education programs, changes to the Rules of Professional Conduct and methods by which the profession might be made more aware of alternative dispute resolution.

General Comments on Implementation of the Report

The Dispute Resolution Subcommittee perceived its report as a powerful endorsement of alternative dispute resolution. The Law Society encourages its members to take advantage of new methods of dispute resolution that benefit clients. The Law Society also has had to come to terms with new issues and concerns that inevitably arise whenever there are changes in the way that law is practised.

The foresight of the Subcommittee was justified. Since February 1993, alternative dispute resolution has gained new prominence. There is new emphasis in the courts on ADR. A pilot project is currently under way in Toronto to divert civil cases into mediation. The Unified Family Court, which contains a substantial mediation component, is slated for expansion to the whole province. Growth and enthusiasm are also exhibited by the growing number of training programs in ADR in Ontario. The Law Society has mounted a number of these courses, but the Canadian Bar Association and private providers have established even more training programs.

The Final Report of the Dispute Resolution Subcommittee has been well-received by benchers and staff of the Law Society. Implementation of the recommendations in the Report have resulted in significant changes in a number of Law Society program areas. Taking into account the uncertainty of any recommendation which attempts to bring about change over time, the implementation of most of the recommendations has been satisfactory.

In some cases, the way that the recommendations could be achieved was clear at the time of the Report. The recommendations concerning the Education are of this type. They have been effectively executed and will have a significant impact on both newly called lawyers and those already in practice. Other recommendations were of a more general nature, such as the recommendation mandating greater use of ADR in departments at the Law Society. These allowed evolution of programs not foreseeable at the time of the report. The participation of the Complaints Department in the CBAO Fee Mediation Service with a commitment to further development of programs in the future is a successful example of this approach.

In order for the Law Society to be a leader in this area, it should ensure that its staff is knowledgeable. A number of departments, for example the Practice Advisory Service, indicated that increased staff training in this area would be beneficial. The Education Department has had one of its faculty take training in ADR. Upon reflection, other departments which have not indicated interest, may find that they would benefit, if staff had greater knowledge of the topic.

The *Alternatives* Report mandated the Law Society to promote the use of ADR where appropriate through its existing programs. Some of the communications recommendations were abandoned for justifiable reasons - lack of funds, lack of demand and unforeseen changes to programs. The 1993 Report represented a commitment by the Law Society to make both the profession and the public aware, within its means, of the broad spectrum of dispute resolution techniques available. This commitment should not be abandoned. For that reason, the recommendations below, ask the Chief Executive Officer to put in place a workable communications strategy which reflects the Law Society's continuing commitment in this area.

RECOMMENDATIONS

It is recommended that Convocation direct the Chief Executive Officer of the Law Society to:

1. Continue to review and develop programs within the Law Society to take advantage of the benefits of alternative dispute resolution (eg. in the Complaints Department, LPIC, and other departments).
2. Draw up and execute a strategy as part of ongoing employee training whereby employees of the Law Society to whom familiarity with developments in alternative dispute resolution would be useful will be given access to education programs and information on ADR.
3. Maintain and, where appropriate, increase the ADR content in the Bar Admission Course and Continuing Legal Education programs.
4. Continue to encourage the Ontario law schools to give greater prominence to ADR in their programs.

5. Formulate a workable communications strategy for dissemination to the profession and the public regarding developments in alternative dispute resolution. For example, should Convocation adopt a new Rule of Professional Conduct, then a communications plan should be developed to make the profession aware of it. The CEO should report back as to whether there is a workable role for the Law Society in making the public aware of ADR.
6. Continue to seek the co-operation and assistance of other organizations (both within and outside the legal profession) in promoting the use of ADR by the public and the profession.
7. Enter into discussions and report back to Convocation regarding the feasibility and possible cost savings associated with increased use of ADR in the Legal Aid system.
8. Report back to Convocation as to the status of implementation in September 1996 or as soon thereafter as Convocation's agenda allows.

Review of the Recommendations of the Alternatives Report

Recommendation
<p>General</p> <p>The Law Society should itself set an example of employing alternatives to litigation whenever appropriate. All committees of the Law Society should be asked to keep constantly in mind opportunities for employing alternatives to litigation as means of resolving disputes. Areas where this might be done include:</p> <p>A.1. implementing mediation for disciplinary, insurance and other professional controversies;</p> <p>A.2. offering advice concerning dispute resolution through the Practice Advisory Service (particularly in respect of partnership disputes);</p> <p>A.3. encouraging community legal clinics to use dispute resolution techniques.</p>

IMPLEMENTATION

Mediation in disciplinary, insurance and other controversies

Complaints

There are a number initiatives in the complaints department which attempt to "mediate" the complaint.

1. *Telephone Complaints Resolution (TCR)*

This process deals with about 15% of complaints received by the Law Society. It has been in place since the early 1990's. Certain types of complaints are clearly resolvable. These include cases where the client merely wants a matter concluded, for example discharging a mortgage or making a report at the conclusion of a matter. These complaints are assigned to specific staff with special facility in dealing with parties on the telephone. Calls to the complainant and the lawyer usually see the problem resolved.

2. *Information Services - Complaints (ISC)*
Various initiatives have been undertaken to "divert" complaints out of the standard, formal investigative process - all of these are grouped within the ISC. The ISC is the department's front line and, when appropriate, it attempts to engage relevant parties in an informal discussion about the complaint. Staffing in this area has been increased significantly (while it has been reduced in others). The principle goal of the ISC is to tackle complaints quickly, provide accurate and useful information aimed at responding to the complainant's needs. ISC currently deals with 25% of complaints without the need for a formal investigation.
3. *CBAO Fee Mediation Service*
Convocation recently approved a proposal which involves the Society in a voluntary referral relationship with the CBAO's ADR section. The fee mediation service operates as an alternative to the Assessment procedure. Voice-mail and Complaints Department brochures have been amended to inform the public about this alternative.
4. *Complaints Resolution Commissioner*
Under legislative reforms recently approved by Convocation for submission to the Ontario government, an opportunity will open to expand the remedial effect of the complaints process for some complaints. Presently the only course open to the staff is to refer a matter for discipline or close the file. Establishing a Complaints Resolution Commissioner will open opportunities for the staff to more actively mediate or conciliate between the parties in order to have the lawyer remedy the problem affecting the client. Where the matter cannot be resolved as proposed by staff, it will be referred to the Complaints Resolution Commissioner, who will instruct the lawyer as to how the problem should be resolved. It is open to the Commissioner to refer some matters on to Discipline where no cooperation is forthcoming.
5. *Complaints Department Mediation Unit*
A steering group has been established within the department which is considering the feasibility and role of a unit that would possess the mandate, resources and training to mediate complicated complaint disputes between lawyers and other parties. The staff have interviewed outside consultants who are developing a model "process." Current budgetary constraints have slowed progress on this initiative.

Lawyers' Professional Indemnity Company (LPIC)

LPIC has been an increasingly active participant in the use of ADR as a dispute resolution method. LPIC would have participated in over 1,000 mediations and arbitrations during the course of the last twelve months. This amounts to approximately all of LPIC's closed claim files save for those that are resolved directly with the claimant by LPIC or its insured. This needs to be compared with two years ago when, it is safe to say, very few claims were mediated or arbitrated.

Advice concerning dispute resolution through the Practice Advisory Service

Over the past three years the Practice Advisory Service has been responding to an increasing number of calls, while facing a shrinking budget. The staff in the Practice Advisory Service are of the view that should Convocation direct that a system of mediation for partnership disputes be set up, then considerable training and expenditure would have to be devoted to the project. Since the report of the Dispute Resolution Subcommittee, commercial ADR services have proliferated. There is no reason why members who have a dispute between themselves cannot avail themselves of these services.

The Practice Advisory Service frequently is asked questions on ADR, and the Service is itself a mechanism for the resolution of some disputes. Where a member has a dispute with another member, the Practice Advisory Service can often offer to have the other member call in order to see if the differences can be resolved. Often members call in order to discuss the advisability of making a complaint of unprofessional conduct against another member. The Service will then give full discussion of the Complaints process and can often resolve the matter without a complaint being laid - for example, by having the more senior lawyer (complainant) write a private letter to the more junior (erring) lawyer explaining where the latter's conduct is remiss.

The Practice Advisory Service staff generally take the view that it is more in keeping with the Role Statement to become involved when clients are involved in a dispute. A large part of time is spent dealing with file transfer issues, and again the Service acts as a forum to resolve the problem. Resolution is sought by reminding members of their obligations under the Rules of Professional Conduct and steering them away from personality issues.

Recommendation
<p>Insurance Coverage</p> <p>That the Insurance Committee of the Law Society amend the errors and omissions insurance policy to cover all services provided by a member as arbitrator or mediator, even if the member in question does not otherwise practise law.</p>

IMPLEMENTATION

The Subcommittee was of the opinion that this recommendation should be made to the Insurance Committee during its deliberations and not wait for completion of the Final Report. The following passage is found at page 20:

- 1.7 *At a meeting of the Insurance Committee held on March 12, 1992, that Committee recommended that changes in the wording of the policy be adopted to ensure the coverage of those members who restricted their practice to mediation and/or arbitration. Convocation adopted this recommendation on March 27, 1992. On June 23, 1992 endorsement number 3 to the Law Society's errors and omissions insurance policy was issued by the insurer, Lawyers' Professional Indemnity Company.*

- 1.8 *Paragraph 5 of endorsement number 3 amends the definition of "professional services" contained in the policy. The definition now includes:*

(ii) Those services performed by an insured in such insured's capacity as an arbitrator or mediator or as a patent or trademark agent.

The Subcommittee and the Insurance Committee are satisfied that this amendment to the policy, corrects the problem...

In a letter dated April 10, 1996, Malcolm Heins, President of LPIC, responded to an inquiry as to the current state of insurance coverage for mediators and arbitrators. The relevant passages are set out below:

Professional services are specifically defined in LPIC's policy of insurance. In summary, the definition states that professional services means "the practice of law of Canada, its Provinces and territories and further means those services performed, or which ought to have been performed by or on behalf of an insured in such insured's capacity as a lawyer ... and shall include, without restricting the generality of the foregoing, those services for which the insured is responsible as lawyer arising out of such insured's activity ... as a mediator or arbitrator.

Accordingly, it is virtually impossible to conceive of a situation wherein a member of the Law Society of Upper Canada, who is insured under LPIC's policy of insurance while at the same time such member acts as an arbitrator or a mediator would not be covered pursuant to the policy's terms and conditions. The reason the opinion is expressed in this fashion is that in nearly all circumstances, it is by reason of the fact that the individual is a lawyer that they are being asked to act as a mediator or arbitrator.

A more likely scenario today is that a number of members of the Law Society of Upper Canada who act solely as mediators or arbitrators are taking the position that they are not required to purchase the insurance and that they are not practising law. They have consulted with us as to whether this is in fact the case and we have advised them affirmatively while at the same time cautioning them that they are not insured for their activities and ought to consider purchasing coverage to protect themselves. We are not able to track whether they have taken our advice unless they purchase the policy from LPIC.

Recommendation
<p>Certification</p> <p>The various Specialty Committees of the Certification Board should give consideration to ADR techniques when setting out criteria for the certification of specialties in existing areas.</p>

IMPLEMENTATION

The Family Law Specialty Committee Standards for Certification include references to ADR experience. The paragraphs on Family Law Experience in the Standards read as follows:

5. The applicant shall have demonstrated substantial involvement in contested family law matters sufficient to demonstrate special ability. Substantial involvement may include active participation in interviewing, giving advice and opinions, preparation of pleadings, examinations before trial, interlocutory proceedings, presentation of evidence, negotiation of settlement, alternative dispute resolution, and submission of argument.
6. During the five years of recent experience defined in paragraph 4.ii.(a) of Practice Experience above, the applicant shall have had carriage of at least fifteen contested family law matters of substance in which a proceeding was commenced, some of which have proceeded to trial; however, if none of these matters of substance in which a proceeding was commenced has proceeded to trial, then the applicant shall provide information to the Committee which may be helpful in assessing compliance with the criteria of substantial family law experience.

When evaluating applications, the Family Law Committee considers the use of ADR techniques as an important aspect of an applicant's practice.

24th May, 1996

The other Specialty Committee relevant to this issue is the Civil Litigation Specialty Committee. No changes were made to the Civil Standards to accommodate ADR experience. When evaluating applications, the Committee places great emphasis on knowledge of court proceedings and trial skills, and only occasionally is consideration made in regard to the use of ADR. This issue may be considered by the Committee in the future possibly with a view to changing the Standards.

The most recent version of the Specialist Certification Program's Directory of Certified Specialists includes space for each lawyer to include a short description of his/her practice. Many lawyers have indicated that they use ADR. This directory is distributed on request to members of the public, so that although Certification does not specifically provide certification for ADR lawyers, it is able to provide to the public the names of some lawyers who have experience in that area.

Recommendation
<p>Certification</p> <p>The Research and Planning Committee should strike a subcommittee when the current review of the Certification Program has been completed to consider the issue of the certification of arbitrators and mediators in light of changes made in the Certification Program.</p>

IMPLEMENTATION

The above recommendation was never carried out since the process by which the Board would consider the implementation of new specialty areas was a long one and only recently resolved. In the February 23, 1996 Report to Convocation, the Board agreed that rather than form subcommittees to develop new specialty areas, the onus would be on the interested specialty group to demonstrate to the Board the need for certification in its specialty area.

At this point in time, the Certification Department has not been approached by any lawyers specifically interested in certification of ADR lawyers.

Recommendation

Education

The Bar Admission Course

The Law Society should take steps to include dispute resolution education and awareness in the Bar Admission Course commencing with the 1993-94 teaching term as follows:

- (a) The Legal Education Committee should appoint an ADR advisory group from the practising bar to work with the section heads and staff to design and implement an alternative dispute resolution curriculum.
- (b) Dispute resolution should receive significant focus in the Civil Litigation, Family Law, and Negotiation courses.
- (c) An exercise in drafting of dispute resolution clauses should be included at appropriate stages in the Bar Admission Course such as Business Law, Family Law and Legal Writing and Drafting.
- (d) Materials and precedents used in all courses should be reviewed with a view to ensuring that appropriate use of dispute resolution processes is modelled where suitable.

The following learning outcomes should be used as an initial content guideline for dispute resolution education in the Bar Admission Course: [Learning Outcomes Omitted]

The approach to dispute resolution education in the Bar Admission Course should be monitored, evaluated and adjusted in future teaching terms as required.

IMPLEMENTATION

ADR content in the Bar Admission Course has been expanded on an ongoing basis since the 1993 Report. There has been a particular expansion in the Civil Litigation course in the following ways: new Reference Material readings, ADR components in the hypothetical client files, and increased ADR content in the lectures. The Civil Litigation course is the first course in Phase Three (Phase Three is the post-articling teaching term), and so the ADR content has a pre-eminent place in the fall term. Courses that follow with an increased focus on ADR are Family Law and Business Law, both in the teaching and in written materials. In Phase One (the pre-articling term), the emphasis is on negotiation skills. Other ADR education is centered in Phase Three.

Rather than appoint a special advisory group, the decision was taken to work through the existing teams of volunteer senior practitioners in each practice area. A member of the permanent Bar Admission Course Faculty has received special intensive ADR education and training, so that at the staff level there is expertise to introduce and expand ADR in a useful way.

Draft proposals for significant changes to the Bar Admission Course include an enhanced mandatory ADR component for all students. Details of the ADR proposals have not been fully developed, but are under way.

The learning outcomes listed in the Report have served as a practical guideline to designing ADR course content. The learning objectives in teaching ADR do not contemplate students becoming experts in the field, but rather contemplate the students having useful entry-level knowledge and skills, which can be applied and enhanced in the early years of each newly called lawyer's practice.

Recommendation

Education

Continuing Legal Education

The Law Society should promote education of lawyers in dispute resolution techniques as follows:

- A.1. Continuing Legal Education should develop a series of dispute resolution courses to deliver dispute resolution education to Ontario lawyers. Criteria should be developed for development of future courses.
- A.2. In developing these courses and the criteria, the British Columbia Continuing Legal Education Society curriculum for dispute resolution education should be evaluated and adapted as appropriate.
- A.3. The Continuing Legal Education Department should work with other organizations and agencies active in the field of dispute resolution education in Ontario to implement education for Ontario lawyers.
- A.4. The Legal Education Committee should establish and appoint a Dispute Resolution Advisory Working Group to design and implement Continuing Legal Education in dispute resolution.
- A.5. In the planning of Lawyers Education Update courses on every subject, the Continuing Legal Education department should consider whether or not inclusion of material on dispute resolution would be appropriate.

IMPLEMENTATION

The following courses, offered by the Law Society's C.L.E. Department, have focused specifically on ADR:

An ADR Primer for Lawyers - December 15, 16, 17, 1993 - This program was presented over three days by Genevieve Chornenki, Judith Ryan and Mary Satterfield to 6 registrants. This was a hands-on program, which introduced lawyers to the practical aspects of ADR, allowing them to examine arbitration and mediation in detail. The program also offered an opportunity for additional registrants to get a sampling of what ADR is all about by participating in the first half day of the program. 76 registrants availed themselves of that opportunity.

Mediation and Women and Child Abuse - March 24, 25, 1994 - This two day workshop was presented by Barbara Landau along with a number of guest speakers. The program was offered in association with the Ontario Association for Family Mediation. We had 21 registrants. Once again we offered registrants an opportunity to register for the first day only, and six registrants availed themselves of that opportunity.

24th May, 1996

Court-Annexed ADR: The New Practice Direction - March 28, 1994 and March 30, 1994 - (offered twice): This program was chaired by Donald Short, and offered on behalf of the Ontario Court of Justice (General Division), the Law Society and the Canadian Bar Association-Ontario. The Ministry of the Attorney General and the Ontario Court of Justice (General Division) initiated a two-year pilot project under which court-annexed ADR services were to be provided in the Toronto region. The program attracted 139 registrants on March 28 and 141 registrants on March 30. In addition, there were three video replays: April 5, 1994 (22), April 6, 1994 (36) and April 14, 1994 for (59).

Negotiation and Settlement in the 90's: New Dimensions for Lawyers - August 26, 1994 - This was a Professional Education Group program, which brought Professor Gerald Williams to Toronto for a full day program, and attracted 154 registrants.

Mediation for the Family Practitioner - April 6, 7, 8, 21 and 22, 1995 and February 1, 2, 3, 23, and 24, 1996 and February 26, 27, 28, 29, March 1, 1996 - This was a five day intensive workshop presented by Judith Ryan and Helen Goudge three times. At the conclusion of the course, registrants received a Certificate of Completion from Family Mediation Canada.

Mastering Mediation: Getting the Best Results for your Client from ADR - March 8, 1996 - This primer chaired by Calum MacLeod was offered in Toronto to 91 registrants. Registrants also received a video cassette of the demonstrations that were featured throughout the day's program.

In addition, apart from programs devoted exclusively to the subject, ADR has been included as a topic in programs on various areas of the law, e.g. Wrongful Dismissal: Alternatives to Trial - November 9, 1995, one half of which was devoted to Mediation and Arbitration. - What's New in the Workplace? A Labour Law Update - October 19, 1995, dealt in part with Labour Arbitration. Family Law for Law Clerks Beyond the Basics - October 30, 1995, dealt in part with Mediation and Assessments.

On April 25, 26, and 27, 1996, Judith Ryan and Helen Goudge are offering Advanced Family Mediation which is limited to 24 registrants. All of these Family Mediation courses are intensive and hands-on, which allows the participant to learn the skills and knowledge necessary to be an effective mediator. Every time we offer these courses by Helen and Judith, we get outstanding evaluations.

In developing C.L.E. courses, it is Department policy, and therefore the practice of the program planning lawyers in developing program ideas, to raise the appropriateness and effectiveness of including an ADR component in C.L.E. courses. Proposed ADR content is raised with each prospective program Chair and planning team.

Some of the programs, listed above, have been joint-initiatives with other continuing education providers, including the Canadian Bar Association Ontario, the Ontario Court of Justice (General Division), the Ontario Association for Family Mediation, and the Professional Education Group (a U.S. provider).

The emphasis has been both on training lawyers as third party intermediaries and on educating lawyers to be effective users of ADR services.

A formal advisory group approach has not been used in developing courses, although the above list of programs demonstrates that the staff program lawyers have been consulting with experts in the ADR field. Initiatives that are in the development phase include the following:

- Proposals for a six day ADR course, divided into two segments of three days each, offering an intensive review of the three major forms of ADR (negotiation, arbitration, mediation). This would be a skills workshop, with limited registration.
- An ADR skills training workshop for lawyers in Barrie.
- A new program in Negotiation Skills is being developed, to be offered in 1996.

Recommendation
<p>Education</p> <p>The Law Schools</p> <p>The Law Society should recognize and encourage dispute resolution education and awareness in Ontario law schools as follows:</p> <p>(a) The Legal Education Committee should encourage dispute resolution education by establishing and sponsoring a student essay competition on this subject.</p> <p>(b) The Legal Education Committee should ensure that dispute resolution courses being taught in law schools in this and other jurisdictions (for example, Alternative Dispute Resolution Program, Faculty of Law, University of Alberta) come to the attention of the deans of the Ontario law schools.</p> <p>The Legal Education Committee should convene an annual discussion forum for law professors and others who are interested or active in the field of dispute resolution education. The agenda for this forum should include discussion of how to incorporate dispute resolution training into the law school curricula, and an evaluation of the success of dispute resolution training in other jurisdictions with a view to possible implementation in Ontario law schools.</p>

IMPLEMENTATION

The role of the Law Society with respect to law schools was recognized in the Report as limited. The Legal Education Committee meets on an annual basis with the Ontario Law Deans, and the importance of enhancing ADR in the Bar Admission Course and at law schools is discussed. The Law Society does not, in any subject area, endeavour to place pressure on law schools to increase ADR.

Nevertheless, the Task Force wishes to place on record its recognition of the steps that the Ontario law schools are taking to give greater prominence to ADR in their programs. Two particular examples are Osgoode Hall Law School, with its part-time LL.M. program in ADR, and the University of Windsor, with its intensive multi-day workshops for the profession, which are offered from time-to-time (at the basic and advanced levels). The Task Force congratulates the law schools on these initiatives.

The Legal Education Committee has not sponsored a law school student essay competition on ADR. (Since the 1993 Report, one of the significant challenges of the Department of Education has been to provide an effective Bar Admission Course student loan and bursary program, to meet the needs of students in an increasingly difficult economic climate.) Dedicating scarce financial resources to an essay competition may not be a particularly meaningful way to promote ADR, when compared with the potential impact of including a major ADR component in law school courses and the Bar Admission Course.

Recommendation

Professional Conduct Recommendations

The Commentaries to Rule 3 (Advising Clients) and Rule 10 (The Lawyer as Advocate) should be amended to place a positive obligation on lawyers to inform their clients of alternatives to litigation. Further, an obligation should be placed upon lawyers to respond to proposals for the use of alternative methods of dispute resolution. A Rule dealing with mediation should require some minimum standards for those who hold themselves out as mediators. This may include the completion of approved courses, as in the British Columbia Rules.

The Rule should continue to require lawyer-mediators to encourage the parties to seek the advice of separate counsel before and during the mediation process. Some consideration should be given as to whether in certain situations the lawyer-mediator is obliged to ensure that the parties are properly represented.

Family Mediation raises unique concerns and should be dealt with in a separate rule from other types of mediation.

IMPLEMENTATION

The Professional Conduct recommendations have been the subject of extensive consideration and debate by the Dispute Resolution Implementation Subcommittee. On April 28, 1995, Convocation adopted the report of the Research and Planning Committee containing a report from the Implementation Subcommittee concerning professional conduct. The relevant excerpts of this report are reproduced below.

2 DRAFTING AND CONSULTATION

- 2.1 *On February 24, 1994, a Consultation Meeting on Family Mediation and Rules of Professional Conduct was held at Osgoode Hall by the Dispute Resolution Implementation Subcommittee. This meeting of twelve individuals discussed Family Mediation and the Rules of Professional Conduct in light of the recommendations arising out of Alternatives.*
- 2.2 *In putting together the consultation meeting of February 24, 1994, the Subcommittee chose to include practitioners of family mediation who were not lawyers. They were included to provide insight into family mediation from other disciplines.*

- 2.3 The view was expressed that lawyers are engaged as mediators and the public is using lawyers because of their credentials. The same is true when the public uses health care professionals for mediation. A controversial question was raised whether the Law Society should recognize mediation as the practice of law. It was noted that the College of Psychology does not take the position that psychologists are somehow not practising when they mediate. Given that lawyers have started to do this work in greater numbers, the same considerations should apply to them.
- 2.4 The meeting of February 24, 1994 therefore concluded that family mediation by lawyers should be regarded as the practice of law.
- 2.5 A number of those attending were of the view that the Society should take this position regardless of the possible consequences for the E & O levy on those practising only family mediation. Many lawyer-mediators have since expressed an opposing point of view. It is the Subcommittee's present view that mediation is not the practice of law.
- 2.6 Following the February 24, 1994 consultation meeting, the Subcommittee prepared 11 draft rules intended to replace Rule 25 and approved them for distribution to the profession on July 21, 1994. Approximately 50 individuals were sent a copy and were asked to respond by September 1994.
- 2.7 The Subcommittee received over 30 responses to the draft rules. Many of the responses were extremely detailed and reflected a wide spectrum of opinion.
- 2.8 As a result of the significant response to the draft rules, the Subcommittee made the decision to hold a wider consultation meeting on February 2, 1995 entitled "The Working Group on Rules of Professional Conduct for Lawyers Acting as Mediators".
- 2.9 There were seven working groups at the session dealing with seven broad areas of concern relating to the regulation of lawyer-mediators. There were over fifty participants at the session. Each group produced a short report. Again, there was a broad range of opinion. The principal conclusion reached, however, was that less regulatory intervention was the better course of action to be taken by the Law Society. There was considerable agreement that Rule 25, as it is presently worded, is sufficiently broad to provide effective guidance to lawyer-mediators in Ontario.

3 SUMMARY OF RECOMMENDATIONS

- 3.1 At its meeting on March 9, 1995, the Dispute Resolution Implementation Subcommittee reached final decisions concerning each of the four Professional Conduct Recommendations contained in Alternatives. Those decisions may be summarized as follows:
 - 3.1.1 The Subcommittee proposes that the commentaries to Rule 3 (Advising Clients) and Rule 10 (The Lawyer as Advocate) remain unchanged.
 - 3.1.2 Instead, the Subcommittee proposes that a new Rule of Professional Conduct be drafted imposing a duty on lawyers to be aware of and consider ADR as an alternative to litigation. The text of the draft rule may be found at Paragraph 4.2 below.

- 3.1.3 With respect to the recommendation that minimum standards be set for those who hold themselves out to be mediators, the Subcommittee recommends that the Law Society should not require minimum standards of competency for lawyers acting as mediators.
- 3.1.4 The Subcommittee reviewed the recommendation that the Law Society impose an obligation on lawyer-mediators to encourage parties to seek the advice of counsel before and during the mediation process. It concluded that it would be inappropriate to impose such a requirement.
- 3.1.5 Although the Subcommittee agreed that family mediation raises unique concerns, it was of the view that it would be inappropriate to attempt to fashion a particular set of rules for lawyers engaged in family mediation.

4 RECOMMENDATION 10 - OBLIGATION TO INFORM CLIENTS ABOUT ADR

- 4.1 The recommended draft rule imposing a duty on lawyers to be aware of and consider ADR as an alternative to litigation is set out below:
- 4.2 Responsibility to Advise Clients of Alternatives to Litigation
 - 1. The lawyer must consider alternatives to court proceedings such as arbitration and mediation, that are available to resolve disputes.
 - 2. The lawyer has a duty to inform the client about such alternative dispute resolution mechanisms.
 - 3. The lawyer has a duty to respond within a reasonable time to proposals by an opposing party or counsel for the use of alternative methods of dispute resolution .
 - 4. The lawyer has a duty to inform the client of any proposal from an opposing party concerning alternative dispute resolution and, if the proposal is rejected, the lawyer must provide reasoned advice as to why alternative dispute resolution is inappropriate.
 - 5. Methods of alternative dispute resolution should be used in good faith to advance the interests of the client and should not be employed to delay a just resolution of the issues.

Commentary

The public needs alternatives to litigation. In appropriate cases, the legal profession is obliged to assist clients to consider such alternatives. The rule requires lawyers to inform clients of such alternatives in order to assist clients in avoiding the costs and delays associated with traditional methods of dispute resolution.

Alternatives to traditional methods of dispute resolution are not restricted to arbitration and mediation. There is a wide spectrum of alternatives to dispute resolution which should be canvassed by the lawyer when advising clients.

It is good practice for the lawyer to give advice concerning alternative dispute resolution in writing to the client.

5 RECOMMENDATION 11 - MINIMUM STANDARDS FOR MEDIATORS

- 5.1 The Subcommittee recommends that the Law Society should not require minimum standards of competency for lawyers acting as mediators.
- 5.2 The rationale for departing from the recommendation lies in the fact that Rules 2 (Competence and Quality of Service) and 25 (Lawyers as Mediators) are adequate to protect the public. The imposition of such a requirement could possibly lead to inconsistent application in various areas of mediation practice and would, in some cases, impose a hardship on some lawyers. Lawyers have a general duty to act competently and the Subcommittee is satisfied that this obligation is currently being met and will continue to be met by lawyer-mediators.
- 5.3 In reaching its decision, the Subcommittee considered the requirements set out in the Rules of Professional Conduct of the Law Society of Alberta governing the qualifications of lawyer-mediators. The Subcommittee noted with interest the relevant portion which is set out below:
- 5.3.1 General -- Mediation and arbitration: Mediation and arbitration are common activities that technically fall outside the practice of law. While remaining bound by this Code...lawyers engaging in such activities should also familiarize themselves with and adhere to other codes of conduct promulgated from time to time by bodies having expertise and authority in those areas.
- 5.4 Although the Subcommittee has been influenced by the Alberta Rule in formulating its recommendations, it does not recommend that a similar rule be included in the Ontario Code of Professional Conduct.

6 RECOMMENDATION 12 - INDEPENDENT LEGAL ADVICE

- 6.1 It was the Subcommittee's view that it would be inappropriate for the Law Society to impose an obligation on lawyer-mediators to encourage parties to seek the advice of counsel before and during the mediation process.
- 6.2 The Subcommittee concluded that in many cases "mediation systems" are specifically designed not to involve counsel.
- 6.3 The imposition of such an obligation may adversely affect lawyer-mediators working with sophisticated parties who do not require or desire the participation of counsel during mediation.
- 6.4 After balancing two principal considerations, viz., the need to protect unsophisticated parties at the same time as allowing sufficient flexibility for sophisticated parties, the Subcommittee concluded that the needs of those parties who require the advice of counsel will invariably be met by lawyer-mediators engaged in that particular area of mediation.
- 6.5 The Subcommittee is further satisfied that statutory obligations regarding independent legal advice, for example, under The Divorce Act, are usually scrupulously observed. Therefore, the need to impose requirements to that end would be superfluous and would perhaps lead to needless confusion.

- 6.6 In effect, Rule 25 is adequate to protect the public. The Subcommittee believes it is best left to the professional competence and experience of the lawyer-mediator to assess the appropriateness of insisting that the parties retain counsel.

7 RECOMMENDATION 13 - UNIQUE CONCERNS OF FAMILY MEDIATION

- 7.1 The Subcommittee recognizes the uniqueness of mediation in the family law context and the special responsibilities of lawyer-mediators engaged in family mediation. These obligations arise in large part from recognition of the power imbalances that arise in the family law context.
- 7.2 The Subcommittee has been made aware that family lawyer-mediators adhere to a strict code of conduct governing mediation and recognize not only power imbalances but the special needs of children.
- 7.3 After considering the merits of a regulatory scheme governing lawyers engaged in family mediation, the Subcommittee was of the view that it would be inappropriate to attempt to fashion a particular set of rules. To date, Rule 25 has served the profession well and no claims of professional misconduct have been made concerning lawyers in the mediation field.
- 7.4 The Subcommittee is particularly concerned that it would be impossible to draft a satisfactory rule that would be of any practical guidance to lawyers engaged in family mediation. The fashioning of complex rules may lead to the inclusion of a number of provisions governing lawyer-mediators in the family law context which may needlessly restrict the latitude of lawyers to act freely in the best interest of the parties, and especially of children, and exclude many practices generally followed in non-legal codes of conduct governing family mediation.

Following the adoption of this report, the proposed rule of professional conduct was submitted to the Professional Conduct Committee for consideration. A subcommittee of that Committee has been considering the matter. Recommendations accompany this month's Professional Conduct Committee report.

Recommendation
<p><i>Public Information Recommendation</i></p> <p>The Final Report of the Subcommittee should have the widest possible publicity and distribution. In order to achieve this aim, the Subcommittee recommends that:</p> <ul style="list-style-type: none">(a) the "Benchers Bulletin" announce the release of the Report and that an Executive Summary of the Report will be distributed to the profession;(b) upon the release of the Subcommittee's Final Report, an Executive Summary be prepared and distributed to all members of the profession.

IMPLEMENTATION

The January 1993 "Benchers Bulletin" contained an announcement and story about the Final Report. A summary of the report was sent to all members in the February 1993 mailing to the profession.

Recommendation
<i>Public Information Recommendation</i>
The Dial-a-Law Tapes:
(a) The existing Dial-a-Law topics should include a reference to Dispute Resolution where appropriate.
(b) There should be a separate tape on Dispute Resolution.

IMPLEMENTATION

A Dial-a-Law (DAL) transcript on ADR has been produced for recording and insertion on the DAL system; however, due to a number of factors including the uncertainty about DAL's future, the high cost associated with revising and re-recording information to ensure its currency, and the fact that there has been virtually no public demand for information relating to ADR, the tape has never been recorded. The Society's statistics moreover show that 85% of DAL callers in recent years have been requesting information about family, criminal and employment law.

Recommendation
<i>Public Information Recommendation</i>
A dispute resolution pamphlet should be developed.

IMPLEMENTATION

Due to lack of demand for this type of information, the Society has not produced as ADR pamphlet.

Recommendation
<i>Public Information Recommendation</i>
The Lawyer Referral Service:
(a) A separate category should be provided on the form used by lawyers to designate practice areas for lawyers to indicate that they act as counsel or third party neutrals in dispute resolution cases.
(b) The Lawyer Referral Service should maintain a list of lawyers who have indicated that they provide services as third-party neutrals. This list should be provided to members of the profession upon request.

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IMPLEMENTATION

The vast majority of Lawyer Referral Service's 3,000 participating lawyers have signed up to provide ADR services; *unfortunately, the response from the public has been virtually non-existent*. LRS agents have not documented a single case where a potential client has requested referral to a lawyer providing ADR services. The most likely reason for this is that members of the public are insufficiently familiar with ADR and do not know enough about it to make even a preliminary assessment of how it might apply to their own legal problem. In instances where ADR is the most preferred solution to a client's legal problem, it is the lawyer who suggests it following an initial assessment of the client's case.

Recommendation
<i>Public Information Recommendation</i> The Network Canadian Dispute Resolution Directory will be mentioned in a footnote in the Executive Summary of the Final Report for the information of lawyers as one directory which the Subcommittee found useful.

IMPLEMENTATION

The form of the Executive Summary changed during its formulation by advice from the Communications Department and approval of the Chair of the Dispute Resolution Subcommittee. A footnote was not included as it was not appropriate for the format.

Recommendation
<i>Implementation</i> The Subcommittee recommends that consideration be given to convening an implementation group or subcommittee in order to aid the implementation of the recommendations found in this Report.

IMPLEMENTATION

In May 1993 the Research and Planning Committee appointed the Dispute Resolution Implementation Subcommittee to oversee implementation of the Report of the Dispute Resolution Subcommittee ("*Alternatives*") which was adopted by Convocation in February 1993.

At its first meeting, the Honourable Allan F. Lawrence, P.C., Q.C., was asked to become Chair of the Subcommittee. Lloyd Brennan, Q.C., Philip M. Epstein, Q.C., Fatima Mohideen, K. Julaine Palmer, Harvey T. Strosberg, Q.C. and Michael G. Somers served on the Subcommittee.

Simon Hodgett and Lance Talbot, staff lawyers, acted as secretaries to the Subcommittee.

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It was moved by Mr. Epstein, seconded by Ms. Backhouse that the Report be adopted.

Mr. Lawrence challenged the Treasurer's ruling that Mr. Lawrence was not entitled to move the adoption of the Report because he could not vote.

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It was moved by Mr. Scott, seconded by Mr. Strosberg that Mr. Lawrence be allowed to move the adoption of the Report.

Lost

The Treasurer's ruling was upheld.

It was moved by Ms. Curtis, seconded by Ms. Ross that Item 7 on page ii of the Report be removed.

Lost

It was moved by Ms. Ross, seconded by Ms. Puccini that Recommendations 11 (Minimum Standards for Mediators), 12 (Independent Legal Advice) and 13 (Unique Concerns of Family Mediation) on pages 20 through 22 be reconsidered.

The Ross/Puccini Motion was taken as a Notice of Motion to be debated in July.

An amendment by Mr. Strosberg was accepted by the mover and seconder to amend the wording in Item 1 on page ii to indicate that LPIC was an independent organization.

The Epstein/Backhouse motion to adopt the Report carried.

THE REPORT WAS ADOPTED

Mr. Lawrence expressed gratitude to Andrew Brockett, Simon Hodgett and Lance Talbot for the work they did on the ADR Implementation Report.

DIAL-A-LAW MOTION

It was moved by Mr. Bobesich, seconded by Mr. Gottlieb that the Dial-a-Law motion be deferred.

Lost

A debate followed.

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

CONVOCATION RECONVENED AT 2:30 P.M.

PRESENT:

The Treasurer, Aaron, Adams, Angeles, Backhouse, Bobesich, Carey, R. Cass, Cole, Copeland, Crowe, Curtis, Eberts, Epstein, Finkelstein, Gottlieb, Lawrence, MacKenzie, O'Connor, Puccini, Ross, Ruby, Sachs, Scott, Stomp, Strosberg, Swaye, Thom, Wardlaw, Wilson and Wright.

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IN PUBLIC
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DIAL-A-LAW MOTION - cont'd

It was moved by Mr. Bobesich, seconded by Mr. Gottlieb that the Dial-a-Law program be discontinued.

Lost

ROLL-CALL VOTE

Aaron	For
Adams	Against
Angeles	Against
Backhouse	Against
Bobesich	For
Carey	Against
Cole	For
Copeland	Against
Crowe	Against
Curtis	Against
Eberts	Against
Epstein	Against
Finkelstein	Against
Gottlieb	For
MacKenzie	For
O'Connor	Against
Puccini	Against
Ross	Against
Ruby	Against
Sachs	Against
Scott	Against
Stomp	For
Strosberg	Against
Swaye	For
Thom	Against
Wilson	Abstain
Wright	For

The Treasurer advised that the Finance Committee be directed to find the funds needed to continue the Dial-a-law program.

BOARD OF LAWYERS' PROFESSIONAL INDEMNITY COMPANY

Rule 50 subsection (k) re: Exemption from payment of levies

Mr. Strosberg presented subsection (k) of Rule 50 for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CHAIRMAN OF THE BOARD OF LAWYERS' PROFESSIONAL INDEMNITY COMPANY begs leave to report as follows:

The current members of the Board are Messrs. Strosberg (Chairman), Feinstein, Murray, Holbrook, McCormick, Cutbush, Crowe, Croft, Sonley, Schjerning, Heins and Mesdames Carpenter-Gunn and Sachs.

A. RULE 50

(i) Convocation, on February 23, 1996 adopted Rule 50 subject to the standing down of that section of the Rule which relates to the "Manitoba" question. Convocation asked for further information so that it could fully debate the issue at its meeting in May.

(ii) For ease of reference, subsection (k) is set out herein in its entirety.

Exemption from payment of levies

(k) The following are eligible to apply for exemption from payment of insurance premium levies:

(i) Any member who, during the course of the year for which the levy is payable, will not engage in the practice of law in Ontario.

(ii) Any member who, during the course of the year for which the levy is payable,

(A) will be resident in a Canadian jurisdiction other than Ontario,

(B) will engage in the practice of law in Ontario on an occasional basis only (where practice "on an occasional basis" means, in the course of the year, not more than ten real estate transactions or not more than eighty hours of work where such work is usually billed on an hourly basis), and

(C) demonstrates proof of coverage for the member's practice in Ontario under the mandatory professional liability insurance program of another Canadian jurisdiction, such coverage to be at least equivalent to that required under the Society's insurance plan.

(iii) Sub-paragraph (k)(ii)(B) was added to Rule 50 as a result of it being determined that there were a number of members of the Law Society of Upper Canada who were resident outside of the Province who were doing significant volumes of work in the Province of Ontario. These lawyers were taking the position that Rule 50 as it previously was drafted permitted them to practice law in the Province of Ontario on a regular basis since they were resident outside of the Province and were covered under the liability insurance program of the Province in which they were resident and also called to the bar. In particular, this situation was identified with lawyers living in Winnipeg who are members of the bar in both the Province of Manitoba and Ontario who were doing significant volumes of work in Northwestern Ontario.

(iv) Complaints have been received by LPIC, the Law Society of Upper Canada and by individual Benchers from Ontario resident members that residency should not in and of itself be an exemption from having to pay the Ontario insurance levies.

- (v) The LPIC Board of Directors in proposing the insurance program to Convocation for 1996 stated that all members of the Law Society of Upper Canada who practiced in Ontario on a regular basis, regardless of place of residence, should be required to pay the Ontario insurance levies. A definition was proposed containing an exemption for those who were resident outside of the Province, demonstrated proof of insurance in their Province of residence provided that they only practiced in Ontario on an occasional basis. "Occasional" was defined as 10 real estate transactions or not more than 80 hours of work where such work is usually billed on an hourly basis.
- (vi) The definition of what constitutes occasional practice was in part drawn from the Interjurisdictional Practice Protocol of February 18, 1994. This document was signed by all the Law Societies in Canada with the exception of Quebec. The Protocol encourages the mobility of lawyers to practice law across Canada and defines in another context "occasional practice" as the situation where one "engages in not more than 10 transactions or works for not more than 20 days during any one year period". The Protocol goes on to state that a lawyer who practices on more than an occasional basis ought to comply with the requirements for a full call to the bar.
- (vii) Sub-paragraph (k)(ii)(B) of Rule 50 is somewhat more restrictive than the Protocol, however, it was felt that given the difficulty of characterizing whether a matter should be billed on a transactional or hourly basis, 20 days could be too generous. Convocation could well consider giving LPIC the discretion to lengthen the number of hours in selected situations. This could be particularly useful where a non-resident member of the Ontario bar was involved in a piece of litigation which extended for longer than the 80 hours presently contained in the rule. Consideration could be given to add the following phrase to sub-paragraph (k)(ii)(B) of Rule 50:

"...or such greater number of matters or days as may be permitted by the Lawyers' Professional Indemnity Company upon application, because of special circumstances."
- (viii) Further to the debate at Convocation in April, a further legal review of the proposed amendments to Rule 50 was obtained from Davies, Ward & Beck. Davies, Ward & Beck were asked to review the rule having regard to the Competition Act, the Law Society Act and the Rule's constitutionality. Mr. Ed Morgan of Davies, Ward & Beck has concluded as follows.

In my view, it is a legitimate exercise of the Law Society's rule-making power to compel non-resident lawyers to pay the same levies as resident lawyers. The rationale for this, however, should have nothing to do with creating or eliminating competitive advantages. Rather, the legitimate rationale would be the same one that prevents any resident Ontario lawyer or group of lawyers from opting out of the LPIC arrangements and seeking private insurance. As a matter of general policy, the professional liability insurance risk for Ontario lawyers is spread across all members of the Law Society. Members who practices are such as to present minimal risk cannot opt out by purchasing private insurance, and the same can be said for members of the Law Society who have

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access to extra-provincial insurance. Membership in the Law Society of Upper Canada can legitimately carry with it the obligation to contribute to the LPIC pool by compulsory payment of Ontario levies, regardless of any alternative coverage available in the particular circumstance. As regulator, the Law Society has a mandate to ensure that all members have accessible insurance coverage, which may well entail same cross-subsidization by low or no-risk practitioners.

Having said that, non-resident lawyers should be treated the same as all resident lawyers in order to accentuate the legitimate insurance purpose for the newly imposed levies. I would, therefore, recommend that these levies be calculated in the ordinary way, without reference to any levies and fees paid by the non-resident lawyers to extra-provincial insurers.

- (ix) Mr. Morgan has succinctly stated the rationale for sub-paragraph (k)(ii)(B) of Rule 50. The only change perhaps that should be considered would be the suggested amendment set out above. This amendment would enable Convocation to administer the rule in virtual conformity with the interjurisdictional protocol signed by the Law Society of Upper Canada.

It is therefore proposed that sub-paragraph (k)(ii)(B) of Rule 50 be adopted as follows:

will engage in the practice of law in Ontario on an occasional basis only (where practice "on an occasional basis" means, in the course of the year, not more than ten real estate transactions or not more than eighty hours of work where such work is usually billed on an hourly basis), or such greater number of matters or days as may be permitted by the Lawyers' Professional Indemnity Company, upon application, because of special circumstances."

Note: Amendment, see pages 239 - 240

ALL OF WHICH is respectfully submitted

DATED this 24th day of May, 1996

H. Strosberg
Chair
Lawyers' Professional Indemnity
Company

It was moved by Mr. Strosberg, seconded by Ms. Stomp that Sub-Paragraph (k)(ii)(B) of Rule 50 shall be amended to read as follows:

- "B. Will engage in the practice of law in Ontario on an occasional basis only, defined as, in the course of the year:
- (i) not more than 10 real estate transactions; or
 - (ii) not more than eighty hours of work where such work is usually billed on an hourly basis; or

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- (iii) such greater number of transactions, hours, or for the duration of such matter, as may be permitted, upon application to the Law Society of Upper Canada."

Carried

THE REPORT AS AMENDED WAS ADOPTED

EPSTEIN/EBERTS MOTION

The Epstein/Eberts Motion re: whether to use Law Society licensing powers to enforce family support payments was deferred.

ORDERS

The following Orders were filed.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 19th day of June, 1995, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by William Trudell, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Joseph Solomon 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 21st day of March, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th May, 1996

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Morris Calvin Orzech,
of the City of Scarborough, a Barrister and
Solicitor (hereinafter referred to as "the
Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 8th day of March, 1996, in the presence of Counsel for the Society, the Solicitor 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 Morris Calvin Orzech 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; such resignation to be submitted by April 15, 1996, failing which that he be disbarred.

DATED this 21st day of March, 1996

"S. Elliott"
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 Frederick Arthur
Helson, of the Town of Halton Hills, a
Barrister and Solicitor (hereinafter
referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 28th day of April, 1995, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Michael Birley, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th May, 1996

CONVOCATION HEREBY ORDERS that Frederick Arthur Helson be suspended for a period of one month commencing April 1, 1996.

DATED this 21st day of March, 1996

"R. Topp"
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 Harry Judah Levinson,
of the City of Toronto, a Barrister and
Solicitor (hereinafter referred to as "the
Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 15th day of February, 1996, 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 Harry Judah Levinson be reprimanded in Convocation.

DATED this 21st day of March, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th May, 1996

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Richard Michael Ittleman, of the Town of Richmond Hill, a Barrister and Solicitor (hereinafter a Barrister and Solicitor (hereinafter referred to as "the Solicitor"))

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 4th day of January, 1996, 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 Richard Michael Ittleman be reprimanded in Convocation, and pay Law Society costs in the amount of \$450.

DATED this 21st day of March, 1996

"S. Elliott"
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 Stanley Charles Ehrlich, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 4th day of March, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th May, 1996

CONVOCATION HEREBY ORDERS that Stanley Charles Ehrlich be suspended for a period of two months, such suspension to be dated from January 18, 1996, and that he pay Law Society costs in the amount of \$500.

DATED this 21st day of March, 1996

"S. Elliott"
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 Douglas Kurtz, of
the City of Toronto, a Barrister and
Solicitor (hereinafter referred to as "the
Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 25th day of October, 1995, 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 Alan Douglas Kurtz be suspended for a period of one month and indefinitely thereafter until he completes his filing.

DATED this 21st day of March, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th May, 1996

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Moshe Teller, of the City of Scarborough, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 15th day of February, 1996, 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 Moshe Teller be suspended for a period of one month and indefinitely thereafter until he has completed his filing, and that he pay Law Society costs in the amount of \$400.

DATED this 21st day of March, 1996

"S. Elliott"
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 Bert Jacques, of the Town of Markham, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 4th day of January, 1996, 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 Bert Jacques be suspended for a period of three months immediately following the current administrative suspension and that the suspension continue thereafter until the Solicitor has:

1. replied in a manner satisfactory to the Law Society, to inadequacies discovered during an examination of his books and records on August 26, 1992, specifically, to correct inactive trust ledger amounts and overdrawn trust ledger amounts; and

24th May, 1996

2. completed all filings required by the Law Society including filing for the fiscal year ended April 30, 1994; and
3. paid costs to the Law Society in the amount of \$450.

DATED this 21st day of March, 1996

"S. Elliott"
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 Sean Dennis Clancy, of
the City of Toronto, a Barrister and
Solicitor (hereinafter referred to as "the
Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 25th day of October, 1995, 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 Sean Dennis Clancy be suspended for a period of one month and month to month thereafter until his filing is made, such suspension to commence at the conclusion of the current administrative suspension. Convocation further orders that the Solicitor pay costs in the amount of \$250.

DATED this 25th day of January, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th May, 1996

CONVOCATION ROSE AT 3:50 P.M.

Confirmed in Convocation this **28** day of *June*, 1996


Treasurer