

28th February, 1992

MINUTES OF CONVOCATION

Friday, 28th February, 1992
9:30 a.m.

PRESENT:

The Treasurer (James M. Spence), Arnup, Bastedo, Bellamy, Bragagnolo, Brennan, Campbell, Carter, Cass, Copeland, Cullity, Curtis, Elliott, Epstein, Farquharson, Feinstein, Finkelstein, Furlong, Goudge, Graham, Hickey, Howie, Howland, Kiteley, Krishna, Lamek, Lamont, Lawrence, Lax, McKinnon, Mohideen, Murray, O'Brien, D. O'Connor, S. O'Connor, Palmer, Pepper, Peters, Rock, Ruby, Scace, Scott, Somerville, Strosberg, Thom, Topp, Wardlaw and Weaver.

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The Treasurer noted with regret the death of Mr. George Wallace, a former bencher of the Law Society and recipient of the Law Society Medal. Mr. Topp addressed Convocation and gave a brief eulogy praising Mr. Wallace's service to the Law Society in the area of legal aid and to the profession in northern Ontario and people of North Bay.

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DRAFT MINUTES

The Draft Minutes for November 22nd, 1991, December 6th, 1991, January 23rd, 1992 and January 24th, 1992 were approved by Convocation.

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MOTIONS

It was moved by Donald Lamont, seconded by James Wardlaw THAT Michael Hickey be added as a member of the French Language Services Committee.

Carried

It was moved by Lloyd Brennan, seconded by Paul Copeland THAT the Treasurer ensure that there be a meeting of the Benchers' Elections Committee prior to the end of March 1992.

The motion was deferred.

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28th February, 1992

LEGAL EDUCATION COMMITTEE

Mr. Lamek presented the Report of the Legal Education Committee of its meeting on February 13th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL EDUCATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of February, 1992. The following members were present: Paul Lamek (Chair), Donald Lamont (Vice-Chair), Thomas Bastedo, Lloyd Brennan, Carole Curtis, Philip Epstein, Abraham Feinstein, Stephen Goudge, Vern Krishna, Colin McKinnon, Ross Murray, Arthur Scace, Marc Somerville, Stuart Thom. Representing the law schools were: Dean Berryman and Dean Mercer. Representing the Bar Admission Advisory Committee was: John Lewis. Staff in attendance were: Marilyn Bode, Brenda Duncan, Mimi Hart, Alexandra Rookes, Alan Treleaven.

C.
INFORMATION

1. LOUIS HARDY CHARLEBOIS

Louis Hardy Charlebois requested a waiver of the requirement that he complete Phase One of the Bar Admission Course.

Mr. Charlebois made his request on the basis of his extensive practice and practice-related experience since receiving his LL.B. from the University of Saskatchewan in 1961.

It was decided to approve Mr. Charlebois' request.

2. FAILURE OF SUPPLEMENTAL EXAMINATIONS: PROCEDURE

Students who failed Bar Admission Course examinations in the 33rd Bar Admission Course were permitted to write supplemental examinations either in the week of January 6, 1992 or the week of February 3, 1992.

Of the 50 students who wrote supplemental examinations in the week of January 6, 4 students failed one or more examinations. Thirteen students wrote supplemental examinations in the week of February 3. The grading is not yet complete.

Section 4.5 of the Requirements for Standing prescribes the basis upon which a student, having failed a supplemental examination, can apply for permission to write a second supplemental examination. A student who is denied such permission or who writes and fails a second supplemental examination is required to complete Phase Three of the Bar Admission Course in its entirety in order to be eligible for admission to the Bar.

Section 4.5 of the Requirements for Standing reads as follows:

4.5 Failure of a Supplemental Examination

There is no appeal from a failure of a Supplemental Examination. The student will be informed in writing of a failure of the Supplemental Examination. Within 10 days of the mailing of this notice, the student

28th February, 1992

may apply in writing to the Director of Education for permission to attempt a second Supplemental Examination. Permission will be granted only if the student is able to establish in the application that extraordinary circumstances of a physical, emotional or other personal nature, not economic or employment-related, substantially explain the student's failure. The application must not include any submission related to the merits of the student's Examination answers.

The student will be informed in writing of a refusal of permission to attempt a second Supplemental Examination. Within 10 days of the mailing of this notice the student may, by writing to the Director of Education, obtain a re-consideration of the application by a sub-committee of the Legal Education Committee. The student may include additional written material, not related to the merits of the student's Examination answers. The decision of the sub-committee will be final.

In order to have sufficient time for completion of the appeal process and to permit students to study, the Director has scheduled the second supplemental examinations during the week of March 23, 1992. Students who are successful in those examinations will be eligible for admission to the Bar at Convocation on April 24, 1992. The Director does not propose to make any exceptions which would permit the writing of a second supplemental examination or the Call to the Bar at an earlier time.

3. BAR ADMISSION COURSE SUBCOMMITTEE

The Bar Admission Course Subcommittee met at 9:30 a.m. on February 12, 1992 in Ottawa. Key items considered included:

- a) Policies governing the 1992 Bar Admission Course,
- b) Reference Materials,
- c) The Conditional Pass rule on examinations.

The Director has prepared a Memorandum to the Bar Admission Course Subcommittee entitled "Report on 1991 Bar Admission Course". (pages 1 - 6) The Memorandum outlines major positive features and problems observed in the 1991 Bar Admission Course, and includes suggestions for dealing with the problems.

4. REQUEST OF THE WOMEN IN THE LEGAL PROFESSION COMMITTEE

On January 24 Convocation adopted a recommendation from the Women in the Legal Profession Committee that the Legal Education Committee be asked to consider continuing legal education programs addressing the issue of employment-related sexual harassment.

The Director of Education has subsequently asked the Director of Continuing Legal Education, Brenda Duncan, to take this recommendation into account in the planning of future Continuing Legal Education programs. Related programming is being planned for the autumn of 1992.

5. DIRECTOR'S BUDGET REPORT

The Director reported orally.

6. CONTINUING LEGAL EDUCATION REPORT ON COURSES

The Report was provided.

28th February, 1992

7. CONTINUING LEGAL EDUCATION SUBCOMMITTEE

The most recent meeting of the Continuing Legal Education Subcommittee was scheduled for 4:00 p.m. on February 27, 1992.

8. ARTICLING SUBCOMMITTEE

The Articling Subcommittee met on Friday, January 24, 1992. In attendance were Marc Somerville (Chair), Denise Bellamy (Vice-Chair), Stephen Goudge, Maurice Cullity, Janne Burton, Jay Rudolph and Victoria Colby. Staff members attending were Marilyn Bode, Deborah Brown, Barbara Dickie, Mimi Hart and Alan Treleaven.

Victoria Colby is an articling student and replaces Barbara Dickie as the Bar Admission Advisory Committee Representative on the Articling Subcommittee. Barbara Dickie has been hired on contract to assist with the implementation of the Articling Reform Proposals.

The Subcommittee gave conditional approval to a further approximately 163 prospective articling principal applications. To date, approximately 850 members of the profession have applied to serve as principals in the 1992/93 articling year.

The Subcommittee considered three abridgment petitions. Two petitions had been deferred from the November meeting of the Subcommittee pending receipt of further information from the applicants. Based on the further information received, the abridgments were granted. The Subcommittee approved one other abridgment application.

The Subcommittee approved the use of an Education Agreement: Principal and Student. The Education Agreement form will accompany the submission of final education plans submitted by law firms.

The Subcommittee is working on an alternative sample evaluation form which could be submitted at the mid-point and completion of the articling term. The matter was scheduled for study again at its meeting of February 28, 1992, at 8:00 a.m.

ALL OF WHICH is respectfully submitted

DATED this 28th day of February, 1992

"P. Lamek"
Chair

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

C-Item 3 - Memorandum from Mr. Alan Treleaven to the Bar Admission Course Subcommittee dated January 31, 1992 re: Report on 1991 Bar Admission Course. (Numbered 1 - 6)

THE REPORT WAS ADOPTED

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ADMISSIONS COMMITTEE

Mr. Howie presented the Report of the Admissions Committee of its meeting on February 13th, 1992.

28th February, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of February, 1992 at 9:30 a.m, the following members were present: Mr. Goudge (Vice -Chair), Messrs. Brennan, Howie and Lamont, Ms. A.M. Stewart.

A.
POLICY

1. TEMPORARY MEMBERSHIP - BILL 75

On 25th November, 1991, third and final reading and Royal Assent were given to Bill 75, an Act to amend the Law Society Act.

Bill 75 permits the admission of persons, who have qualified to practise outside of Ontario, as temporary members of the Law Society of Upper Canada. Temporary members are permitted to act as barristers and solicitors while in the employ of the Attorney-General for Ontario or, if appointed under the Crown Attorneys Act, as Crown Attorneys or Assistant Crown Attorneys.

The Committee was asked to determine what procedure the Admissions Department staff would follow in order to admit and track these members, as well as, what fees schedule would apply to this category of membership.

The Committee recommends the following:

Fees:

Every temporary member of the Society shall pay the full Annual Fee, for each financial year of the Society, in an amount to be determined by Convocation.

Temporary members admitted to the Society between January 1st and June 30th (inclusive) shall be required to pay 50% of the full Annual Fee in their year of admission only.

Note: referred back to Committee, see page 92

E. & O. Levies:

Temporary members will be entitled to claim exemption from the Errors & Omissions Levy as they are working under the jurisdiction of the Attorney General's department. They will be required, however, to file the prescribed form in order to claim exemption.

Annual Filings:

Temporary members will be required to comply with the Society's Annual Filing requirements.

Mailings:

Temporary members will receive all membership mailings.

28th February, 1992

B.
ADMINISTRATION

1. DIRECT TRANSFER - COMMON LAW - REGULATION 4(1)

The following candidate has met all the requirements to transfer under Regulation 4(1):

William Ian Kennedy
Firoz R. Dossa

Province of Alberta
Province of British Columbia

Approved

2. DIRECT TRANSFER - QUEBEC - REGULATION 4 (2)

The following candidate has met all the requirements to transfer under Regulation 4 (2) :

Flora Pearl Eliadis

Approved

3. CALL TO THE BAR AND CERTIFICATE OF FITNESS

The following candidates having successfully completed the 33rd Bar Admission Course and having deferred their Call, now have filed the necessary documents and paid the required fee and apply for call to the Bar and to be granted a Certificate of Fitness at the Regular Convocation on February 28, 1992:

Brown, Kathleen May
Chippindale, Elizabeth Ann
Cowling, David George
Dossetor, John Bernard
French, Laird Stanley
Galati, Luciano
Howe, Norman Iverson Maxwell
Johnson, Nancy May
Jung, Ji Kyo
Kim, Yong Nam
MacDonald, Ian Douglas
McMahon, Donald James
Rae, Randall Norman
Sprigings, Warren Neil
van der Vink, Janet Bond Davis
Wolman, Jeffrey Charles Lloyd

Approved

The following candidates having completed supplemental course work have now successfully completed the 33rd Bar Admission Course, filed the necessary documents and paid the required fee now apply for Call to the Bar and to be granted a Certificate of Fitness at the Regular Convocation on February 28, 1992:

Fiorino, Mario
How, Linda June
Misir, Vishnu Eseaspersuad
Morin-Currie, Kelly Lee
Ogilvie, Ishbel Susan

Approved

28th February, 1992

The following candidates are completing supplemental examinations for the 33rd Bar Admission Course with results expected by February 14 and, if successful, wish to be Called to the Bar and granted a Certificate of Fitness at the Regular Convocation on February 28, 1992:

Burke, Joseph Patrick
Burns, Brenda Elizabeth
Cullen, Patricia Anne
Dimitrijevic, John
Doupe, Michael Joseph
Dube, Joseph Paul
Emerson, Wesley Norman
Freedman, Gordon Sean
Matthews, Demetra Sanda
Moss, George William David
Moss, Jacqueline Crysler
Pigott, Christopher Sean
Zehr, Elisabeth Margarete

These applications are approved conditional on the candidates successfully completing the course, filing the necessary documents and paying the required fee prior to February 28, 1992:

The following 32nd Bar Admission Course candidate expects to complete the Course on February 16, 1992 and wishes to be Called to the Bar at the Regular Convocation on February 28, 1992:

Fedoruk, James Curtis

This application is approved conditional on the candidate successfully completing the course, filing the necessary documents and paying the required fee prior to February 28, 1992.

At its meeting on February 13th, 1992, the Legal Education Committee granted a request from a 33rd Bar Admission Course candidate that the requirement that he complete Phase One of the Bar Admission Course be waived. Upon the Legal Education Committee granting his request, the following candidate became eligible to be called to the Bar at Regular Convocation on February 28th, 1992:

Charlebois, Louis Hardy

This application is approved by the Committee conditional on Convocation approving the relevant section of the Legal Education Committee's report and the candidate filing the necessary documents and paying the required fee prior to February 28th, 1992.

4. APPLICATION - FOREIGN LEGAL CONSULTANT

An application was received from Anna Delores Tapay of the firm Shearman & Sterling which is based in New York to become licensed as a foreign legal consultant in Ontario.

Ms. Tapay was called to the Bar of the State of New York on January 7, 1992. She is a third year associate with the firm of Shearman & Sterling, having commenced work as an associate attorney with the firm in September 1989. Ms. Tapay received her law degree from the Columbia University School of Law in May 1987.

28th February, 1992

Shearman & Sterling, which currently has twelve offices outside of New York, typically rotates associates to one of those foreign offices when the attorney becomes a third or fourth year associate. The associate usually spends two years in the foreign office before returning to the New York office. It is anticipated that Ms. Tapay will spend at least two years in the Toronto office.

Ms. Tapay will be under the direct supervision of Pamela Gibson, who was licensed as a foreign legal consultant with Shearman & Sterling, in 1988.

Both Ms. Tapay and her firm have filed all the necessary undertakings.

The application and supporting material were available at the request of the Committee.

The Committee recommends that the Ms. Tapay's application be approved.

C.
INFORMATION

1. REPORT OF ADMISSIONS HEARING - A STUDENT
GOOD CHARACTER

A panel of Benchers, representing the Admissions Committee met on Thursday, January 30th, 1992 at 1:30 p.m., the following being present: Colin Campbell (Chair), Rino Bragagnolo and Maurice Cullity.

This was a hearing under Section 27(2) of the Law Society Act in respect of an application of a law student for admission to the Society. The hearing was required because of concerns raised during the applicant's period of articles with respect to the applicant's reliability and punctuality, which could have given rise to greater question about the applicant's integrity in the future. In addition, there was concern that the applicant appreciated the appropriateness of a lawyer's good conduct in serving not only his clients and interests, but those of his fellow professionals.

After hearing all of the evidence, including character witnesses appearing on behalf of the applicant, the Committee concluded that the applicant was of good character and ought to be called to the Bar.

The Admissions Committee reviewed the report of the Hearing Committee and concurred in its unanimous decision.

Noted

ALL OF WHICH is respectfully submitted

DATED this 28th day of February, 1992

"K. Howie"
for Earl J. Levy
Chair

Item 1, Policy re: Fees - Temporary membership, was referred back to the Finance and Administration Committee.

THE REPORT AS AMENDED WAS ADOPTED

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28th February, 1992

FINANCE AND ADMINISTRATION COMMITTEE

Mr. Howie presented the Report of the Finance and Administration Committee of its meeting on February 13th, 1992.

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 13th of February, 1992 at three o'clock in the afternoon, the following members being present: K.E. Howie (Chair), J.J. Wardlaw (Vice-Chair), R.C. Bragagnolo, P.G. Furlong, R.W. Murray, P.B.C. Pepper, and M.P. Weaver. Also in attendance were D.A. Crosbie, D.E. Crack and D.N. Carey.

A.
POLICY

1. LAW SOCIETY ACT SECTION 31 - MEMBERSHIP IN ABEYANCE

In June 1990 Section 31 of the Law Society Act was amended to extend its provisions for placing membership in the Society in abeyance to full-time members of the Ontario Municipal Board and full-time members of tribunals that have a judicial or quasi-judicial function and that are named in the regulations for the purposes of this section.

Concern was expressed at that time that the extension to members of the Ontario Municipal Board would open the avenue to many more such situations. It was suggested that the Society obtain information as to how many such Boards and Commissions existed, what the terms of reference of each of these Boards were, and the requirements of membership on such Boards.

The Committee was advised by the then Attorney General Ian Scott in a letter dated October 21, 1988 (This was confirmed by Ann Merritt of the now Attorney General's office) as follows:

"Recently, my ministry undertook a review of major government tribunals to determine whether in addition to lawyer-members of the OMB, there were other lawyer-members of tribunals who are required by statute to devote full time to their responsibilities and are prohibited from participating in outside work. It was discovered that members of only two Boards -- the Rent Review Hearing Board and the Ontario Highway Transport Board -- are expressly prohibited from accepting or holding any office or employment outside of their position on the Board. The chairpersons of four other tribunals (the Ontario Securities Commission, the Liquor Licence Board, the Liquor Control Board and the Commercial Registration Appeal Tribunal), and the chairperson and vice-chairperson of the Workers' Compensation Board are required by statute to be "full-time" members -- which may imply that these members, as well are prohibited from engaging in outside work."

It is noted, then, that there are two other Boards, ie. The Rent Review Hearings Board and the Ontario Highway Transport Board whose memberships expressly prohibit accepting or holding out any office or employment outside of their position on the Board. Members of these two Boards have not yet approached the Society to have their memberships placed in abeyance.

28th February, 1992

Although not set out in the amendment, at the time the Legislation was approved by Convocation three requirements were considered necessary by the Committee to entitle a tribunal to inclusion under Section 31.

1. The tribunal was judicial or quasi-judicial in scope.
2. Membership on the tribunal was full-time.
3. Members on the tribunal were prohibited from employment outside of the functions as tribunal members.

The President of the Environmental Assessment Board has requested that the Board be named in the regulation for the purposes of Section 31.

It appears that the Board is judicial or quasi-judicial in nature and the request is in respect of full-time members of the Board. However, unlike the Ontario Municipal Act which specifically prohibits other employment the Environmental Assessment Board Act contains no such limitations. It should also be noted that this Board was not listed by the former Attorney General as one that would be subject to the amendment.

Direction of the Committee was requested as to whether the Board should be named under Section 31 because of its practice of joint hearings with the Municipal Board and the apparent de facto limitation on outside employment.

The Committee recommended that due to the fact that the Environmental Board members are not prohibited from other employment that membership in abeyance under Section 31 be denied.

B.
ADMINISTRATION

1. FINANCIAL REPORT

The Director presented the highlights memorandum for the three Law Society Funds together with supporting financial statements for the seven months ended January 31st 1991. (pg. 10-15)

Approved

2. 1992/93 BUDGET

- (a) Discussion of budget process.

The Chairman lead a discussion outlining the details of the budget process, matters to be considered by the Society in setting the fees for 1992/93, and the timetable for completion (schedule attached). (pg. 16-17)

- (b) Discussion of Finance and Administration budget.

Draft working papers for the 1992/93 budget for Finance and Accounting, Information Systems and Human Resources Departments including projections to the end of the current fiscal year were before the Committee. The Director is to prepare the budget for distribution to the Committee on the basis that there be no increase over the 1991/92 amounts.

4. LAW STUDENTS' CONSTITUTIONAL CONFERENCE - REQUEST FOR FUNDING

The Student Council of Osgoode Hall law School is organizing a conference, to bring together over 100 representatives from 21 Canadian Law Schools, to "search for consensus and areas of common ground" with respect to the current Constitutional debate. The conference will take place from March 6 to March 8 1992.

A letter dated January 10, 1991 from the Co-Chair Mr. Alan Diner, seeking funding of \$5,000, against a total budget of \$29,690 from the Law Society was before the Committee. (pg. 18-19)

The Committee approved a payment of \$2,500.

5. ANALYSIS OF THE MANITOBA LEGAL AID STUDY - FUNDING

The Legal Aid Plan engaged Teri Pristupa to prepare an analysis of a study of Legal Aid done by the Province of Manitoba.

Total cost of the study was \$15,732.50 and the Provincial Director, Robert L. Holden, in a letter to the Secretary, asks the Law Society to share the cost.

The Committee was asked to consider a contribution of up to one half of this amount.

Note: Item deleted, see page 101

denied

6. CANADIAN LEGAL INFORMATION CENTRE - 1992/93 FUNDING

The Directors of CLIC will be meeting on February 14th to discuss the budget for their fiscal year which commences April 1, 1992. Claudette Racette, the Administrative Manager of CLIC, has asked the Finance Committee whether they might commit at this time, to a level of funding for 1992/93. The amount granted in 1991/92 was \$55,000.

The matter is deferred for future discussion. The Director is to contact Samuel Lerner, the Society's representative on CLIC, and provide the Committee with further details with respect to the operations of CLIC.

7. JUNIOR ACHIEVEMENT - SUPPORT FOR AWARD SPONSORSHIP PROGRAM

The Secretary has been asked by Mr. George Habib, President and C.E.O. of Junior Achievement of Metro Toronto and York Region, whether the Law Society would sponsor the Vice President of Administration award.

The cost of sponsorship would be \$1,000. Details about Junior Achievement and its award program are in the attached letter from Mr. Habib. (pg. 20-21)

The Committee was asked to consider this sponsorship.

denied

8. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 56 members who have not complied with the requirements respecting annual filing and who have not paid their late filing fee.

In all 56 cases all or part of the late filing fee has been outstanding four months or more. The 56 members owe \$68,250 of which \$15,700 has been owing for more than four months.

28th February, 1992

The Committee was asked to recommend that the rights and privileges of the 56 members be suspended on February 28, 1992 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: motion, see page 101

9. SUSPENSION OF MEMBERS - ARREARS OF ANNUAL FEES

There are 1,081 members who have not paid their Annual Fees for 1991/92. Four notices have been sent.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on the 28th of February 1992 if the annual fees remain unpaid on that date.

Approved

Note: motion, see page 101

10. SUSPENSION OF MEMBERS - ERRORS AND OMISSIONS LEVY

The following members paid their Errors and Omissions Insurance Levy for the period July to December 1991 with a cheque which was subsequently dishonoured by the bank.

Gerald Bruce Fox	\$ 826.04
George Thomas Gardiner	1,241.20
Mary Elizabeth Kneeland	1,098.89
Thomas Michel Hicks	1,097.89
Ted Roland Laan	1,047.70

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on February 28th 1992 if the Errors and Omissions Insurance levy remains unpaid on that date.

Approved

Note: motion, see page 102

11. MEMBERSHIP UNDER RULE 50

(a) Retired Members

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

James Killen Doran	Toronto
Alexander James Hanes	London
Nicholas Pasic	Toronto
Donald Frederick Pattison	Toronto
William Alan Scott	Mississauga
George Vano	Toronto
John Walker Whiteside	Tecumseh

(b) Incapacitated Members

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

Stanley Irwin Goodman Cote-St.-Luc, PQ
David Rubin Willowdale

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

Approved

12. RESIGNATION - REGULATION 12

(i) Sharon Ruth Westman of Toronto has applied for permission to resign her membership in the Society and has submitted a Declaration in support. She was called to the Bar the 14th of April 1988 and has never practised law since her call to the Bar. Her annual filings are up to date. The member has requested that she be relieved of publication in the Ontario Reports.

(ii) David John Andrew Gibb of Toronto has applied for permission to resign his membership in the Society and has submitted a Declaration in support. He was called to the Bar on the 9th of April 1987 and has never practised law since his call to the Bar. His annual filings are up to date. The member has requested that he be relieved of publication in the Ontario Reports.

(iii) Anthony Chisholm Abbott of Duncan, British Columbia has applied for permission to resign his membership in the Society and has submitted a Declaration in support. Mr. Abbott was called to the Bar on the 19th of March 1970 and has never practised law in Ontario since his call to the Bar. His annual filings are up to date. The member has requested that he be relieved of publication in the Ontario Reports.

(iv) Jill Agnes Prindiville of Toronto has applied for permission to resign her membership in the Society and has submitted a Declaration in support. She was called to the Bar on the 10th of April 1986 and has never practised law since her call to the Bar. She was granted a deferral of fees for the 1987-88 year. These fees amount to \$918.00 and are still outstanding. Her annual filings are up to date. The member has requested that her application be approved without publication in the Ontario Reports and without payment of arrears of fees.

(v) Irene Mary Kavanagh of Winnipeg, Manitoba has applied for permission to resign her membership in the Society and has submitted a Declaration in support. She was called to the Bar on the 15th of April 1988. She practised with Haber & Haber from July of 1988 until her move to Manitoba in July of 1989. She was granted a deferral of fees for the 1989-90 year. These fees amount to \$894.00 and are still outstanding. She declares that she has not handled trust funds or other client's property in Ontario since July of 1989. Her annual filings are up to date. The member has requested that her application be approved without publication in the Ontario Reports and without payment of arrears of fees.

(vi) Gregory Michael Rudka of Chicago, Illinois has applied for permission to resign his membership in the Society and has submitted a Declaration in support. He was called to the Bar on the 15th of April 1988. He practised with Davies, Ward and Beck from the time of his call until the 31st of January 1991 and has not practised since that time. He maintains that he did not handle trust funds

28th February, 1992

or other client's property, as well, and that all clients matters have been disposed of and completed and such client matters continue to be handled by solicitors at the former firm. He is presently pursuing an MBA and has no plans to practice law in Ontario in the future. His annual filings are up to date. The member has requested that he be relieved of publication in the Ontario Reports.

(vii) Clare Whitney Morrison of Sutton West, Ontario has applied for permission to resign his membership in the Society and has submitted a Declaration in support. Mr. Morrison was called to the Bar on the 25th of June 1953 and practised until the 1st of January 1967, when he was appointed to the Provincial Court Bench. He was restored to the Rolls of the Society on the 1st of December 1975 and practised in Ontario until the 1st of July 1976. His rights and privileges as a member of the Society were suspended on the 25th of June 1983 for his failure to pay the 1982-83 annual fees. Arrears of fees now total \$7369.00. The member has requested that his application be approved without publication in the Ontario Reports and without payment of arrears of fees.

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

Approved

C.
INFORMATION

1. RETURN TO ACTIVE PRACTICE

Albert Abramson retired under Rule 50 on the 24th of April, 1987. He applied and has returned to full-time practice on the 6th of January 1992 after paying the appropriate fees and levies.

Noted

2. LIFE MEMBERS

Pursuant to Rule 49, the following is eligible to become a Life Member of the Society with an effective date of the 19th of February 1992:

George Arthur Fallis Toronto

Noted

3. CHANGES OF NAME

(a) Members

<u>From</u>	<u>To</u>
Marie Francoise Lysanne Cholette-Yeates	Marie Francoise Lysanne <u>Cholette</u> (Maiden Name)
Terri Lee Shea	Terri Lee <u>McCarthy</u> (Maiden Name)
Susan Penny Groberman	Susan Penny <u>Marr</u> (Married Name)
Trudy Katharyn Barker	Trudy Katharyn <u>McCormick</u> (Married Name)
Barbara Jean Bogoch	Barbara Jean <u>Bennett</u> (Married Name)

Noted

4. ROLLS AND RECORDS

(a) Deaths

The following members have died:

Francis Joseph Jordan Ottawa	Called September 16th 1937 Died January 3rd 1991
Lawrence Smith Eckardt Delta, BC	Called November 20th 1930 Died June 14th 1991
Margot Elizabeth Halpenny Toronto	Called April 6th 1979 Died November 25th 1991
Angeline Bassel Toronto	Called April 14th 1978 Died December 15th 1991
Leicester Clayton Forster Niagara On The Lake	Called October 20th 1927 Died December 17th 1991
Mitchell Saul Greenberg St. Hubert, PQ	Called May 25th 1990 Died December 20th 1991
Martin Andre Rivest New Liskeard	Called April 9th 1987 Died December 21st 1991
Barry Harcourt McKague Toronto	Called March 19th 1970 Died January 15th 1992
Henry Robert Sheppard Kingston	Called April 22nd 1963 Died January 17th 1992

Noted

(b) Permission to Resign

The following member was permitted to resign her membership in the Society and her name has been removed from the rolls and records of the Society:

Marion Yuen Yee Wong	Called April 15th 1987
Don Mills	Permitted to Resign - Convocation September 26th 1991

Noted

(c) Disbarments

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

Arnold Saul Handelman	Called March 19th 1970
Willowdale	Disbarred - Convocation January 23rd 1992

Noted

28th February, 1992

(d) Membership in Abeyance

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

Kenneth Charles Binks Ottawa	Called September 17th 1953 Appointed to the Ontario Court of Justice General Division November 29th 1991
Peter Graham Jarvis Toronto	Called March 25th 1966 Appointed to the Ontario Court of Justice General Division December 23rd 1991
Gerald Romeo Morin Ottawa	Called March 26th 1965 Appointed to the Ontario Court of Justice General Division December 23rd 1991
Douglas James Anderson Rutherford Ottawa	Called March 2nd 1968 Appointed to the Ontario Court of Justice General Division December 23rd 1991
John Douglas Cunningham Ottawa	Called March 21st 1969 Appointed to the Ontario Court of Justice General Division December 23rd 1991

Noted

5. LEGAL MEETINGS AND ENTERTAINMENT

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

February 13, 1992	Elizabeth Fry Society Barristers Lounge
February 18, 1992	Attorney General Reception Convocation Hall
February 20, 1992	Lawyers Club Convocation Hall
February 21, 1992	Delos Davis Reception Convocation Hall
February 21, 1992	Wilson Moot Reception Barristers Lounge

28th February, 1992

February 29, 1992

Gale Moot Dinner
Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 28th of February, 1992

"K. Howie"
Chair

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

- B-Item 1 - Memorandum from Mr. David Crack to the Chair and Members of the Finance Committee dated February 12, 1992 re: January 1992 Financial Statement Highlights. (Numbered 10 - 15)
- B-Item 2 - Schedule for 1992/93 Budget Procedure. (Numbered 16 - 17)
- B-Item 4 - Letter from Mr. Alan Diner of the Law Students Constitutional Conference to Mr. Richard Tinsley dated January 10, 1992. (Numbered 18 - 19)
- B-Item 7 - Letter from Mr. George Habib, President & CEO, Junior Achievement of Metro Toronto and York Region, to Mr. Richard Tinsley dated January 29, 1992. (Numbered 20 - 21)

Item 5 re: Analysis of the Manitoba Legal Aid Study - Funding under the Administration section, was deleted.

THE REPORT WITH THE EXCEPTION OF B-ITEM 5 WAS ADOPTED

.....

MOTION TO SUSPEND: FAILURE TO PAY ANNUAL FEES

It was moved by Kenneth Howie, seconded by James Wardlaw THAT, having not paid their annual fees for the period July 1st, 1991 to June 30th, 1992, the rights and privileges of each of the members on the attached list be suspended for a period of one year from March 6th, 1992 and from year to year thereafter, or until their fees are paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

(See list in Convocation file)

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

It was moved by Kenneth Howie, seconded by James Wardlaw THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from February 28th, 1992 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

(See list in Convocation file)

28th February, 1992

MOTION TO SUSPEND: ERRORS AND OMISSIONS LEVY CHEQUES RETURNED N.S.F.

It was moved by Kenneth Howie, seconded by James Wardlaw THAT the rights and privileges of the following members who paid their Errors and Omissions Insurance Levy for the period July 1st, 1991 to December 31st, 1991 with cheques which were subsequently dishonoured by the bank be suspended from February 28th, 1992 for one year and from year to year thereafter until the necessary levy has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Gerald Bruce Fox	\$ 826.04
George Thomas Gardiner	1,241.20
Mary Elizabeth Kneeland	1,098.89
Thomas Michael Hicks	1,097.89
Ted Roland Laan	1,047.70

The motions for suspensions were stood down.

.....

DISCIPLINE COMMITTEE

Mr. Rock presented the Report of the Discipline Committee of its meeting on February 13th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of February, 1992 at one-thirty in the afternoon, the following members being present:

Mr. Rock (Chair), Ms. Peters (Vice-Chair), Messrs. Topp (Vice-Chair), and Finkelstein, Ms. Graham, Messrs. McKinnon, Murphy, Murray, O'Connor, Scott, Thom and Yachetti.

Also in attendance were Ms. Devlin, Messrs. Kerr, MacKenzie, Macri, Varro and Yakimovich.

A.
POLICY

1A. ADVANCE PUBLICATION OF INFORMATION
RESPECTING DISCIPLINARY PROCEEDINGS

Your Committee, at the suggestion of the Chair, has agreed to appoint a sub-committee to report to the Committee's March, 1992 meeting on issues relating to the advance publication of information on members facing disciplinary action by the Society. The Committee was advised that the concern arises out of three occasions where members have suffered prejudice by errors in reports published prior to the conclusion of disciplinary proceedings.

The Chair advised the Committee that Gavin MacKenzie, Senior Counsel - Discipline will be preparing a discussion paper on the Society's current practice in disclosing information on pending hearings, the relevant jurisprudence, the facts of the cases in question, and any ramifications flowing therefrom, to assist the committee in formulating a policy on this question.

2A. ORDERS FOR COSTS AT DISCIPLINARY HEARINGS

Your Committee considered whether Law Society counsel, where it is deemed appropriate, should request a discipline hearing panel to make an order against a member for costs of the disciplinary proceeding if a finding of professional misconduct or conduct unbecoming a barrister and solicitor is made. Such an award would contribute to the Society's costs of investigating and prosecuting the complaint.

At present, Convocation has statutory jurisdiction to order the payment of costs (see section 34, the Law Society Act). Hearing panels do not have that authority at present, except on consent, although the reforms that have now been approved by Convocation contemplate statutory amendments to vest that authority in hearing panels. In the meantime, Law Society counsel might consider, when exploring the prospects for a joint submission before hearing panels, whether the solicitor will agree to a term requiring the payment of costs.

Note: Item deleted, see page 104

Your Committee therefore recommends that Convocation adopt a policy whereby discipline counsel be given standing instructions to

- i) request in appropriate cases an order for costs in the Society's favour when a finding of professional misconduct or conduct unbecoming a barrister and solicitor is made; and
- ii) explore the prospect of securing an agreement or undertaking by a solicitor, where a joint submission is to be made to a hearing panel, to pay costs to the Society as part of the recommended disposition.

Your Committee further recommends that the policy, if adopted by Convocation, be published in the Proceedings of Convocation in the buff pages of the Ontario Reports.

B.
ADMINISTRATION

1B. BUDGET - FISCAL 1992-93

Your Committee discussed draft budget proposals from the Audit, Complaints and Discipline Departments. With a view to budgetary restraint, the Committee identified individual items in each of the budgets and requested that staff from each department rework their proposals and produce revised material with explanatory notes for the Committee by the end of February in preparation for discussion at the March, 1992 meeting.

28th February, 1992

C.
INFORMATION

1C. DISCIPLINARY PROCEEDINGS IN FRENCH

Your Committee, through one of its Vice-Chairs, Mr. Topp, was advised that a report would be referred to the Committee by the French Language Services Committee respecting concerns about meaningful disciplinary proceedings in the French language. The report will be considered by the Committee at a future meeting.

2C. AUTHORIZATION OF DISCIPLINE CHARGES

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

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

	<u>Sought</u>	<u>Obtained</u>
Discipline	10	9
Complaints	12	11
Audit	0	0
Total Number of Charges Authorized to Date for 1992		
January	20	

ALL OF WHICH is respectfully submitted

DATED this 28th day of February, 1992

"A. Rock"
Chair

Paragraph 2 under Item 2A. (Policy) re: Orders for Costs was deleted.

THE REPORT AS AMENDED WAS ADOPTED

.....

ORDERS

The following Orders were filed with Convocation.

28th February, 1992

Re: ARNOLD SAUL HANDELMAN, Mississauga

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Arnold Saul Handelman,
of the City of Mississauga, a Barrister and
Solicitor (hereinafter referred to as "the
Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 2nd day of January, 1992, in the presence of Counsel for the Society, the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of conduct unbecoming and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the said Arnold Handelman be disbarred as a Barrister and that his name be struck off the Roll of Solicitors and that his membership in the said Society be cancelled.

DATED this 23rd day of January, 1992.

"James M. Spence"
Treasurer

(Seal -
The Law Society of Upper Canada)

"Richard F. Tinsley"
Secretary

Filed

Re: ERNEST ROVET, Toronto

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Ernest Rovet, 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 13th day of November, 1991, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor

28th February, 1992

being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Ernest Rovet be suspended for a period of twelve (12) months, such suspension to commence on the 23rd day of January, 1992.

DATED this 23rd day of January, 1992.

"James M. Spence"
Treasurer

(Seal -
The Law Society of Upper Canada)

"Richard F. Tinsley"
Secretary

Filed

.....

CLINIC FUNDING COMMITTEE

Mr. Epstein presented the Report of the Clinic Funding Committee of its meeting on February 13th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of LEGAL AID begs leave to report:

CLINIC FUNDING

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

The Director recommends to Convocation that the report of the Clinic Funding Committee dated February 14, 1992 be adopted.

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

ALL OF WHICH is respectfully submitted

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

February 14, 1992

28th February, 1992

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

The Clinic Funding Committee met on February 13, 1992. Present were: Philip Epstein, Q.C., Chair, Joan Lax, Jim Frumau, Thea Herman and Pamela Giffin.

A. DECISIONS

1. Applications to the Clinic Funding Committee

a. Supplementary legal disbursements

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

Simcoe Legal Services Clinic - up to \$1,000
Flemington Community Legal Services - up to \$1,900
Community Legal Services (Ottawa-Carleton) - up to \$1,500

2. Special Legal Education/Outreach Funds

The Committee has reviewed the initial decision of the clinic funding staff with respect to special legal education/outreach funds in 1991/92, and recommends Convocation's approval as follows:

Advocacy Resource Centre for the Handicapped - up to \$6,245

To produce a pamphlet in 10 languages on abuse of people with disabilities.

Community Legal Services of Niagara South - up to \$2,000

To conduct a one-day conference directed to local governmental agencies on the Freedom of Information and Protection of Privacy Act in general, and FIPPA issues in immigration and refugee matters in particular.

Kinna-aweya Legal Clinic - up to \$1,510

To produce refrigerator magnets with basic information about the clinic.

Legal Assistance Kent - up to \$1,200

To produce 5,000 copies of a brochure on rights to quality of housing, and 75 copies of a manual on how to implement a community development project to improve housing in other communities.

Legal Assistance of Windsor - up to \$2,829

To produce 10,000 copies of a brochure for residents and service providers on rights and responsibilities of residents in s.109(1)(f) Landlord and Tenant Act premises.

Legal Assistance of Windsor - up to \$3,030

To produce 10,000 copies of a brochure for the public on rights, responsibilities and protection when dealing with collection agencies.

Metro Toronto Chinese & Southeast Asian Legal Clinic - up to \$6,080

To conduct two one-day training sessions for community workers serving the Chinese and Vietnamese communities and four workshops for members of those communities on social assistance and landlord/tenant law.

Hastings & Prince Edward Legal Services - up to \$8,750

To conduct a one-day conference on social assistance for the consumer, advocates, service providers, and the general public.

Northumberland Community Legal Centre - up to \$1,000

To produce two series of pamphlets for both injured and non-injured workers on Workers' Compensation, both pre and post-bill 162.

3. Clinique juridique populaire de Prescott et Russell re. Additional Salary Funds

The Clinic Funding Committee has approved payment of additional funds to this clinic, in an amount up to \$34,325.79, consisting of salary funds and benefits, for the fiscal year 1991/92. These additional funds are required by the clinic now that a new staff lawyer has been hired to fill a vacancy.

4. 1992/93 Budget Estimates

The Clinic Funding Committee has completed its review of estimates for 1992/93 and has approved a budget request to the Ministry of the Attorney General in the amount of \$32,070,714. This total includes the amount required to meet increased operating costs in the 70 clinics, and a minimal salary increase for existing staff. The Committee has not requested expansion funds in recognition of the fiscal restraint required. A summary of the budget estimate is attached as Schedule I.

It is recommended that Convocation approve the 1992/93 budget estimates requested by the Clinic Funding Committee.

B. INFORMATION

1. Meeting with Aboriginal Legal Services of Toronto

The Committee met with representatives of the Aboriginal Legal Services of Toronto clinic to discuss the delay in opening this community legal clinic. The Committee was assured that the clinic

28th February, 1992

would be open and offering services to Aboriginal people residing in Toronto by June, 1992.

ALL OF WHICH is respectfully submitted

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

February 14, 1992

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

A-Item 4 - Summary of the Clinic Funding Committee 1992/93 Budget.
(Schedule I)

THE REPORT WAS ADOPTED
.....

PROFESSIONAL CONDUCT COMMITTEE

Mr. Somerville presented the Reports of the Professional Conduct Committee of its meetings on January 9th, 1992 and February 13th, 1992.

This matter was stood down.
.....

CALL TO THE BAR CEREMONIES - CONVOCATION HALL

The candidates listed in the Admissions Committee Report were called to the Bar by the Treasurer. Mr. Lamont presented the candidates to Mr. Justice Lee Ferrier to sign the Rolls and take the necessary oaths.
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RESUMPTION OF PROFESSIONAL CONDUCT COMMITTEE REPORTS

Meeting of February 13th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

28th February, 1992

Your Committee met on Thursday, the 13th of February, 1992 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Campbell, Elliott, Feinstein, Finkelstein, Mohideen, O'Connor and Topp.

A.
POLICY

1. REQUEST FOR CLARIFICATION - DOES RULE 5
PERMIT A LAWYER TO ACT FOR BOTH SPOUSES
IN THE PREPARATION OF AN AGREEMENT WHERE
THERE IS AN AMICABLE SEPARATION?

The Family Law sub-committee of the Professional Standards Committee has been working on a checklist for the guidance of practitioners. Part of the preamble dealing with marriage contracts and cohabitation agreements reads in part:

No matter how amicable relations between parties are, counsel must only act for one party to the agreement. Otherwise, its terms may subsequently be open to attack on a number of fronts and the lawyer left vulnerable to Errors and Omissions claims on the basis of a conflict of interest.

The County and District Law Presidents Association has objected that Rule 5 of the Rules of Professional Conduct appears to permit a lawyer to act on both sides of an amicable separation so long as there is compliance with that rule.

The relevant parts of Rule 5 are:

The lawyer must not advise or represent both sides of a dispute and, save after adequate disclosure to and with the consent of the client or prospective client concerned, should not act or continue to act in a matter when there is or there is likely to be a conflicting interest.

COMMENTARY

Guiding Principles

1. A conflicting interest is one which would be likely to affect adversely the lawyer's judgment on behalf of, or loyalty to a client or prospective client, or which the lawyer might be prompted to prefer to the interests of a client or prospective client.

Disclosure and Consent

4. The Rule requires adequate disclosure to enable the client to make an informed decision about whether to have the lawyer act despite the presence or possibility of the conflicting interest. As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf should not be subject to other interests, duties or obligations, in practice this factor may not always be decisive. Instead it may be only one of several factors which the client will weigh when deciding whether or not to give the consent referred to in the Rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the extra cost, delay and inconvenience involved in engaging another lawyer and the latter's

unfamiliarity with the client and the client's affairs. In the result, the client's interests may sometimes be better served by not engaging another lawyer, for example, when the client and another party to a commercial transaction are continuing clients of the same law firm but are regularly represented by different lawyers in that firm.

5. Before the lawyer accepts employment for more than one client in a matter or transaction, the lawyer must advise the clients concerned that the lawyer has been asked to act for both or all of them, that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned and that, if a conflict develops which cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely. If one of such clients is a person with whom the lawyer has a continuing relationship and for whom the lawyer acts regularly, this fact should be revealed to the other or others with a recommendation that they obtain independent representation. If, following such disclosure, all parties are content that the lawyer act, the latter should obtain their written consent, or record their consent in a separate letter to each. The lawyer should, however, guard against acting for both sides where, despite the fact that all parties concerned consent, it is reasonably obvious that an issue contentious between them may arise or their interests, rights or obligations will diverge as the matter progresses.

The Committee concluded that the preamble in the Family Law sub-committee's checklist dealing with marriage contracts and cohabitation agreements was too strong. It would be preferable if the preamble read as follows:

No matter how amicable relations between parties are, counsel should consider whether to act for both parties or just one party to the agreement. The lawyer should recognize that the agreement may subsequently be open to attack on a number of fronts and the lawyer left vulnerable to Errors and Omissions claims on the basis of a conflict of interest.

The Committee asks Convocation to adopt its suggested amendment and that the Professional Standards Committee be so advised.

Note: Referred back to Special Committee, see page 115

2. PROPRIETY OF A LAW FIRM PAYING AN
ARTICLED STUDENT'S SALARY TO A CONSULTING
COMPANY IN WHICH THE ARTICLED STUDENT HAS
AN INTEREST IN OR CONTROLS

It came to the Society's attention that a law firm had entered into an arrangement with an articled student to pay his salary to a consulting company in which the student has an interest or controls.

The Society's Secretary and the Committee's Secretary were of the opinion that this arrangement was not in order. Their opinion was influenced by a position taken in 1981 by the Committee that the following arrangement was not in order: a firm's management company was paying the salaries of three employed lawyers and then charging the law firm a contracted fee which was approximately 10% greater than the salaries paid to the lawyer employees by the management company. The Committee said that this arrangement would mean that a corporation

28th February, 1992

could carry on the practice of law which is not permitted under the existing rules (vol. 6 of the Minutes of Convocation 1981 pgs. 223-224).

The Society's Secretary sent the following letter to Mr. E. John Freyseng, Q.C. of the Blaney, McMurtry firm:

I would like to thank you and your firm for its co-operation in this matter.

It turns out that Jane Knox of your office did have a conversation with Marilyn Bode in our Education Department. She did indicate to Ms. Knox that the arrangement being proposed was not inappropriate. She did not know that the vehicle in question was a consulting company nor that the student's salary was to be a consulting fee.

The following is the position Stephen Traviss and I take:

An articled student is articled to a member of the bar. As part of that relationship the articling student renders services to the lawyer for which the articling student is paid and the law firm in return trains the student to be a lawyer.

A consulting company cannot be articled to a law firm. Accordingly it would be improper for a law firm to pay a student's articling salary to a consulting company even though that student may own or have a share in the consulting company.

With a view to putting this matter to rest once and for all, I propose to put your arrangement on the February agenda of the Professional Conduct Committee on a basis whereby there is no reference to your firm.

I will let you know what the Committee decides.

I would like to thank you and your firm for your patience and co-operation.

The law firm was not concerned if there was a reference to Blaney, McMurtry.

Mr. Freyseng sent a letter from the articling student in question, Bernd Christmas. His letter indicated that he was in agreement with what Mr. Christmas had to say.

Thank you for your letter of January 21, 1992. Pursuant to our telephone conversation I have spoken to Mr. Bernd Christmas and have reviewed your letter to me, with him.

Please find enclosed a submission by way of letter from Mr. Christmas, addressed to the Professional Conduct Committee. I would ask you to circulate it among the members of the Committee for their review, when this matter is placed on the February agenda of the said Committee.

My own opinion is that I agree with Mr. Bernd Christmas' position on this matter.

28th February, 1992

Mr. Christmas' letter is set out below:

I am writing to the Professional Conduct Committee in response to the above mentioned matter.

On January 21, 1992, the Secretary of the Law Society of Upper Canada, Mr. Richard Tinsley, wrote to Mr. John Freyseng, Q.C., a senior partner at Blaney, McMurtry, Stapells, the firm to which I am articled. In his letter he states that he and Mr. Stephen Traviss take the position that:

"An articled student is articled to a member of the bar. As part of that relationship the articling student renders services to the lawyer for which the articling student is paid and the law firm in return trains the student to be a lawyer.

A consulting company cannot be articled to a law firm. Accordingly it would be improper for a law firm to pay a student's articling salary to a consulting company even though that student may own or have a share in the consulting company."

I assume that this position was developed in response to how, as an articling student, I am receiving compensation from Blaney, McMurtry, Stapells. Please review the attached employment contract between myself and O.I. Employee Leasing Inc., the contract between O.I. Employee Leasing Inc. and the law firm, and my Articles of Clerkship.

From my interpretation of Mr. Tinsley's and Mr. Traviss's position, the problem seems to be that O.I. Employee Leasing Inc. is a consulting company and that since I am being paid by them, I am a consultant to the law firm. If this interpretation is correct then I submit that this is not correct. The relationship between the three parties, namely, O.I. Employee Leasing Inc., Blaney, McMurtry, Stapells, and me is well defined by the attached agreements. The relationship between my law firm and me is defined by the Articles of Clerkship. The three agreements do not conflict. I have agreed to fulfil my duties as laid out by in the Articles of Clerkship, namely:

- a) at all times to keep the secrets of the Solicitor and his/her partner or partners or brothers and his/her and their clients/Court;
- b) to obey and execute all lawful and reasonable demands;
- c) not to absent himself/herself from the service of the Solicitor without leave;
- d) truly, honestly and diligently to serve the Solicitor in accordance with the provisions of The Solicitors Act and the Rules of the Law Society of Upper Canada, at all times during the term hereof;
- e) to indemnify the Solicitor and make good and reimburse him/her for any damage, injury or loss that the Solicitor may suffer through in any breach by the Clerk of this contract or any covenants therein.

28th February, 1992

Upon close reading of my contract of employment you will find that I have agreed to fulfil the Articles of Clerkship as set out by the Law Society of Upper Canada.

I also submit that I have not breached the educational component of the Articles of Clerkship. On a day to day basis I am being supervised by numerous lawyers in regards to their files and am being taught how to be a lawyer, both from a practical and ethical perspective.

It is submitted that the Articles of Clerkship do not prevent me from assigning my compensation for articling to a third party. Compensation is a matter that is to be dealt with between the law firm and me. This was even admitted to by an employee of the Law Society of Upper Canada, Ms. Marilyn Bode in your Education Department, when, prior to commencing my articles, Ms. Joan Knox, the personnel manager of Blaney, McMurtry, Stapells's, inquired whether any compensation package would be acceptable to the Law Society.

Furthermore, the attached agreements indicate that I am not a consultant. I do not have an interest in the leasing company nor do I have a share in the consulting company. The only "interest" that I do have is in seeing that this Native owned company succeeds and that other Natives such as I, can utilize the services of the company to further our careers in this ever increasingly competitive job market.

If questions arise from my brief submission, please feel free to contact me at Blaney, McMurtry, Stapells. I would also like to thank the Committee for allowing me to make a written submission.

Attached (numbered 1 - 7) are the attachments Mr. Christmas refers to in his letter.

The Committee, after some discussion, concluded that there was nothing wrong with the arrangement because it did not impact negatively on the student member's responsibilities or on the Law Society's ability to regulate his professional conduct. The Committee was also advised that the Clinic Funding Committee of the Ontario Legal Aid Plan had approved of an arrangement whereby some of the staff of the clinics were employees of a consulting firm and paid as such and that various government ministries including the Ministry of the Attorney General had no objection to such fiscal arrangements.

The Committee asks Convocation to accept its conclusion and to advise the Blaney, McMurtry firm that it has no problem with the fiscal arrangement it has entered into in arranging for Mr. Christmas to be paid.

ALL OF WHICH is respectfully submitted

DATED this 28th day of February, 1992

"M. Somerville"
Chair

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

28th February, 1992

A-Item 2 - Attachments to articling student Bernd Christmas' letter.
(Numbered 1 - 7)

It was moved by Philip Epstein, seconded by Thomas Bastedo that Convocation accept in principle that in regard to domestic contracts lawyers not be permitted to act for both parties and the matter be referred back to the appropriate committee for necessary action.

Withdrawn

It was moved by Colin Campbell, seconded by Fran Kiteley that a paragraph on Rule 5 be put in the guidelines and raise the issues debated in Convocation and that the Professional Conduct Committee review Rule 5.

Mr. Campbell's motion was amended that the issue be referred back to the Special Committee on the Rules of Professional Conduct for consideration on an urgent basis.

Carried

THE REPORT AS AMENDED WAS ADOPTED

Meeting of January 9th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of January, 1992 at three o'clock in the afternoon, the following members being present: Mr. Campbell (Chair), Ms. Elliott and Messrs. Finkelstein and Topp. Messrs. McKinnon and Scott attended at the invitation of the Committee.

A.
POLICY

1. ERROR BY OPPOSING PARTY'S COUNSEL
IN FAXED COMMUNICATIONS

Earlier this year a law firm asked what a lawyer's duty was upon receiving a fax that was clearly sent in error. After discussing the issue at two meetings it was decided that lawyers be advised to observe certain guidelines. Draft guidelines have been prepared by Mr. Campbell and the Committee's Secretary for discussion by the Committee.

ERROR BY LAWYERS IN COMMUNICATING WITH OTHER LAWYERS

It is not uncommon for lawyers to misdirect communications so that they wind up on the desk of the lawyer representing the party opposed in interest to their client. These misdirected communications include letters, faxes, messages on voice mail and affidavits of documents.

28th February, 1992

It will be obvious that the communication was misdirected. Most faxes that lawyers send out have a caveat such as:

This telecopy is confidential and may also be privileged. If you are not the intended recipient, please notify us by telephone and either return the telecopy to us by mail or destroy it. We will reimburse you for any postage. Any use by you of this telecopy is strictly prohibited.

What should a lawyer do when in receipt of a mis-directed communication? Quite apart from the legal question as to whether a lawyer can use mis-directed information as evidence in any pending litigation or administrative proceeding (there is recent English Court of Appeal authority to suggest that a court may issue an injunction to prevent such use, see Derby & Co. Ltd. and Others v. Weldon and Others), there is the duty of professional courtesy and good faith owed by lawyers to one another. Accordingly lawyers are advised to observe the following guidelines:

- (1) The lawyer should advise the opposing lawyer of the mis-directed communication.
- (2) The lawyer should return all mis-directed documentation to the opposing lawyer.
- (3) The lawyer should not use any information gleaned from the mis-directed communication.

Mr. Levy in the second edition of Examination of Witnesses in Criminal Cases has noted:

Where the contents of the privileged communications, whether oral or in a privileged document, have become known to a third party through accident or negligence of the legal advisor they are admissible in evidence, although the trial judge has the discretion to exclude this information. Where a note that the accused had written to his counsel was found on the floor of the courtroom during an adjournment and given to the Crown, the latter was allowed to use the note in cross-examination of the accused. Wigmore states:

All involuntary disclosures in particular, through the loss or theft of documents from the attorney's possession are not protected by the privilege, on the principle...that, since the law has granted secrecy so far as its own process goes, it leaves to the client and attorney to take measures of caution sufficient to prevent from being overheard by third persons. The risk of insufficient precautions is upon the client. This principle applies equally to documents.

Despite the above, in New Zealand it was held that a police officer could not testify to a conversation between counsel and his client which he had, without impropriety, overheard. The right to privacy is inherent in the right to retain and instruct counsel.

Mr. Campbell has commented, in referring to the English Court of Appeal authority and that cited by Mr. Levy, "I think the difference between these two authorities is the issue of negligence. If my client is negligent that is one

28th February, 1992

thing, on the other hand, if someone takes advantage of what they know to be a confidential communication my clients should not lose privilege."

The Committee asks Convocation to adopt the above guidelines and requests that they be referred to in the Proceedings of Convocation published in the Ontario Reports.

Note: Motion, see page 119

2. SUB-COMMITTEE ON THE MARTIN v. GRAY CASE
(DECISION ON CONFLICTS OF INTEREST)

On December 19th 1991 a letter was sent to the members of the Committee containing a draft report which the sub-committee wished sent to Convocation in January by the Committee. The report updates the activity of the sub-committee and indicates that it is working on a set of guidelines that will hopefully address problems in this area. Set out below is the draft report:

The Martin v. Gray decision handed down by the Supreme Court of Canada in December 1990 has presented a challenge to Canadian Law Societies and bar associations. They have been invited by the Supreme Court to develop guidelines to assist lawyers in the avoidance of conflicts in order that the following objectives may be realized:

- (1) The faith of the public in the administration of justice can be maintained by the avoidance of conflicts by lawyers.
- (2) Adequate guidelines that can address conflicts in the early stages by the transfer of the file to a new lawyer or the putting in place of screening mechanisms can result in keeping down legal costs to members of the public.
- (3) That where possible the client should have the right to the counsel of his or her choosing; and
- (4) lawyers should have as much job mobility in their careers so long as the interests of the administration are not interfered with.

Various law groups across Canada are busy studying the issues raised by this case. The Canadian Bar Association has produced an interim report that contains much that is helpful. It is hoped that through the vehicle of the Federation of Law Societies a set of common guidelines could be formulated so that the response of lawyers throughout Canada would be uniform.

The Professional Conduct Committee's sub-committee has been liaising with the Canadian Bar Association's Task Force and with the C.B.A.O.'s Business Section Committee. As well, the activities of other groups are being monitored.

Due to the importance to the extent possible of producing a common set of guidelines the sub-committee has nothing concrete to report at this time. It was thought important to let the Benchers know what was happening with respect to this most timely and important subject.

It is expected that there will be a further report with something concrete in April.

The Committee asks Convocation to adopt the report and have it published in the Proceedings of Convocation so that the profession can be informed as to what is being done.

3. REQUEST FOR ADVICE - ADVERTISING

A lawyer practising in the criminal law field has asked if he could put under his name in an advertisement the words "expert defence of serious charges". He is not a certified specialist in criminal law. The only possible objection to the advertisement would be if the public would be misled by it and believe that he is a specialist.

The Committee believes that the descriptive language proposed would be misleading and should not be used.

The Committee asks Convocation to adopt its opinion.

C.

INFORMATION

1. SERVICE OF OFFICIAL DOCUMENTS IN THE
FRENCH LANGUAGE - REQUEST FOR DIRECTION

Dominique Paquet, Secretary to the French Languages Services Committee, has sent the following memorandum to the Committee's Secretary:

In response to concerns raised by the Association des juristes d'expression française (AJEFO), the Chair of the French Language Services Committee has asked that the following matter be referred to your committee for review.

It appears that (1) some Ontario court offices and (2) members of the profession refuse to accept service of official documents in French.

Our committee realizes that the Ontario court matter must be handled by government authorities. However, where this refusal involves the conduct of a Law Society member towards a fellow lawyer, and assuming that it would require the addition of a rule, it feels that an amendment or addition to our Code may be required.

In May 1990, the following amendment was made to the New Brunswick Code of Professional Conduct:

A lawyer shall not refuse service or reception, or return a document sent to him by another lawyer, solely on the ground that the document is written in English or French only, subject to any contrary provision or any Act, Regulation or Rules of Court.

Subsection (2)(b) of section 135 of the Courts of Justice Act, 1984, appears to address this question in part:

28th February, 1992

135.-(1) The official languages of the courts of Ontario are English and French.

(2) Except as otherwise provided with respect to the use of the French language,

- (a) hearings in courts shall be conducted in the English language and evidence adduced in a language other than English shall be interpreted into the English language; and
- (b) documents filed in courts shall be in the English language or shall be accompanied by a translation of the document into the English language certified by affidavit of the translator. R.S.O. 1980, c.223, s.130 (1).

The Committee concluded that section 135 would in fact permit a party to a proceeding to file documents that are only in the French language and that sub-section 2(b) refers to languages other than French and English. So too a party should be able to serve the lawyer for another party with documents that are in French only. The Committee found that section 135 was not well drafted and intends to take it up with the Rules Committee.

Once this has been done the issue will be revisited by the Committee.

ALL OF WHICH is respectfully submitted

DATED this 24th day of January, 1992

"M. Somerville"
Chair

The Chair consented to Item 1 under the Information section re: Service of Official Documents in the French language, be referred back to the Committee for review.

It was moved by Harvey Strosberg, seconded by Clay Ruby that Item 1 under the Policy section re: Error by Opposing Party's Counsel, be sent back to Committee for further consideration.

Carried

THE REPORT AS AMENDED WAS ADOPTED
.....

LIBRARIES AND REPORTING COMMITTEE

Mr. Topp presented the Report of the Libraries and Reporting Committee of its meeting on February 13th, 1992.

28th February, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of February, 1992, at 9:00 a.m., the following members being present:

D. Murphy (Chair), R. Topp (Vice-Chair), R. Bragagnolo, S. Elliott, A. Feinstein, B. Pepper and Mrs. Weaver; D. Crosbie, G. Howell, and P. Bell also attended.

A.

POLICY

No Items

B.

ADMINISTRATION

1. COUNTY AND DISTRICT LAW ASSOCIATIONS - GRANTS FOR 1992

The Chief Librarian reported that he had received all of the budgets from the 47 County Law Associations. The Chair requested a discussion of ways to soften the impact of the Law Foundation's probable reduced grants for 1993 to the County and District Law Associations. The Chief Librarian reported on the budgets and proposed grants to the Counties for 1992.

Your Committee decided to approve the distribution to the counties as recommended by the Chief Librarian.

2. ONTARIO REPORTS - PAPER PARTS - BUFF PAGES

It was reported that Butterworths has requested a review by the Society of the printing of summaries of Proceedings of Convocation in the Buff Pages of the Ontario Reports. Under the July 31st, 1991, contract between the Society and Butterworths summaries of the Proceedings of Convocation are printed at Butterworths' expense. Butterworths has suggested several ways to achieve cost savings such as printing in signatures of 16 or 32 pages and printing the Proceedings on less expensive paper and in a fashion to save a total of 30%.

After a discussion of the recommendations of staff your Committee recommends that the policy of communicating the Summary of Proceedings through the Ontario Reports be referred to the Communications Committee, and that the Communications Committee meet with the Chief Librarian as liaison contact for the Libraries and Reporting Committee. In addition your Committee recommends that the Secretary of the Law Society be reminded of the publishing contract's provision concerning the Buff Pages and endeavour not to exceed the agreed upon number of Buff Pages and the level of Butterworths' financial subsidization thereof.

28th February, 1992

3. ACCOUNT OF COUNSEL

The account of counsel for the Society for the period October 1st to December 31st, 1991, was approved by the Committee.

4. THE COMMERCIAL LIST PRACTICE DIRECTIONS

A letter was received from Mr. Justice Farley of the Ontario Court of Justice regarding the publication of Practice Directions in the Ontario Reports. Mr. Justice Farley's specific request was for the publication of a Practice Direction from the Commercial List of the Ontario Court of Justice, without cost to the court and as a public service to members of the Society.

Your Committee recommends that, based on the contractual provisions with Butterworths and the budget restraints, especially as regards the Buff Pages, the Society cannot accede to free placement of the Practice Direction in the Law Society's pages preceding the cases. However, based on a meeting between Mr. Justice Farley and Messrs. Murphy and Howell later on Committee Day, the Society has agreed to request Butterworths to place this Practice Direction at the end of the cases in the March 13th issue of the Ontario Reports, and be indexed along with the cases.

C.
INFORMATION

1. FINANCIAL REPORT

The Chief Librarian reported to the Committee on the Department's budget.

2. BOOK LIST

The Great Library has added 39 new titles to its book collection for February 1992.

ALL OF WHICH is respectfully submitted

DATED this 28th day of February, 1992

"R. Topp"
for Chair

THE REPORT WAS ADOPTED

.....

LEGISLATION AND RULES COMMITTEE

Ms. Elliott presented the Reports of the Legislation and Rules Committee of its meetings on January 9th and February 13th, 1992.

28th February, 1992

Meeting of January 9th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of January, 1992, at 2:30 p.m. the following members being present:

S. Elliott (Vice-Chair in the Chair), S. Lerner and S. Thom; P. Bell also attended.

A.

POLICY

No items

B.

ADMINISTRATION

No items

C.

INFORMATION

1. R.S.O. 1990 - THE LAW SOCIETY ACT

It was reported that the Law Society Act, as printed in the R.S.O. 1990 ch. L.8, has been edited as follows:-

- (a) the Act is translated into French;
- (b) the Act is gender-neutral; and
- (c) the Act is in plain language.

The Secretary of the Committee was instructed to review the Act to see if any substantive changes have been made and to bring a report forward at the February meeting of the Committee.

2. It was reported that Bill 75, an Act to amend the Law Society Act to provide for temporary members who are working for the Attorney-General, or as Crown Attorneys on an exchange program, received third and final reading and Royal Assent on November 25th, 1991, a copy of the Act is attached. The Act implements the policy approved by Convocation on April 27th, 1991. (Pgs. C1-C2)

28th February, 1992

3. DEPARTMENT BUDGET

The Secretary of the Committee reported that all accounts are within budget for the six months ending December 31st, 1991.

ALL OF WHICH is respectfully submitted

DATED this 24th day of January, 1992

"S. Elliott"
for Chair

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

C-Item 2 - Copy of Bill 75, an Act to amend the Law Society Act.

(Marked C1 - C2)

THE REPORT WAS ADOPTED

Meeting of February 13th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of February, 1992, at 2:30 p.m. the following members being present:

S. Elliott (Vice-Chair), R. Cass, D. Murphy, and S. Thom; and P. Bell also attended.

A.
POLICY

No items

B.
ADMINISTRATION

1. OATHS AND AFFIRMATIONS

In mid-1991 your Committee concluded that the existing practice, of candidates for call to the bar and enrolment as solicitors having the option of making an oath or an affirmation, should be incorporated into the Rules under the Law Society Act. Counsel has drafted the amendments. The Committee discussed the amendments and decided that the existing practice of permitting oaths or

28th February, 1992

affirmations should be continued without incorporating the change into the Rules. However, the Committee decided that the words "fellow-citizens" should be made gender-neutral.

IT IS RECOMMENDED that the Rules under the Law Society Act be amended as follows:

OATHS

51(1) The following oaths shall be administered in accordance with subrule 4 of rule 53 in either the English or the French language:

1. OATH OF ALLEGIANCE:

You do swear that you will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or the reigning sovereign for the time being), Her heirs and successors according to law. So help you God.

2. BARRISTERS OATH:

- (1) You are called to the Degree of Barrister-at-law to protect and defend the rights and interest of such citizens as may employ you. You shall conduct all cases faithfully and to the best of your ability. You shall neglect no one's interest nor seek to destroy any one's property. You shall not be guilty of champerty or maintenance. You shall not refuse causes of complaint reasonably founded, nor shall you promote suits upon frivolous pretences. You shall not pervert the law to favour or prejudice any one, but in all things shall conduct yourself truly and with integrity. In fine, the Queen's interest and the interest of citizens you shall uphold and maintain according to the constitution and law of this Province. All this you do swear to observe and perform to the best of your knowledge and ability. So help you God.

2. RULE 50

It was reported that on January 24th, 1992, Convocation approved the Report of the Finance and Administration Committee that Rule 50 be amended so that persons admitted, readmitted, restored or who transfer from other jurisdictions should pay the annual fees or levy in the year of call to the bar and students who graduate from the Bar Admission Course and are called to the Bar in that year should not have to pay the annual fees or levy for that financial year.

IT IS RECOMMENDED that Rule 50 be amended as follows:

ANNUAL

Unless otherwise exempted every member of the Society shall pay an annual fee, to include a Lawyers Fund for Client Compensation levy, for each financial year of the Society in an amount to be determined by Convocation. The annual fee shall be due and payable on the 1st day of October in each financial year, or if a member is admitted, readmitted or

28th February, 1992

restored to membership on a date subsequent to the 1st day of October, the annual fee is due and payable on the date on which the member is admitted, readmitted or restored. Student members who are admitted during the financial year in which they complete the Bar Admission Course are not required to pay the annual fee for the financial year in which they are called to the bar and admitted as a Solicitor.

C.
INFORMATION

1. DEPARTMENT BUDGET

It was reported that all accounts are within budget.

2. R.S.O. 1990 - THE LAW SOCIETY ACT

It was reported that the editorial revisions to the Law Society Act, R.S.O. 1990, that was enacted and received Royal Assent on December 31st, 1991, have been reviewed by staff.

THE COMMITTEE DECIDED THAT:

- (1) the Staff investigate the history of the incorporation of the Law Society;
- (2) that the editorial revisions to Section 33(1)(c) and Section 34 of the Law Society Act R.S.O. 1990 be referred to the Discipline Committee (Policy Section).

ALL OF WHICH is respectfully submitted

DATED this 28th day of February, 1992

"S. Elliott"
for Chair

It was moved by Karen Palmer, seconded by Patricia Peters that Item 1 under the Administration section re: Oaths, be referred back to the Committee to draft plain English language versions of the oaths.

Lost

THE REPORT WAS ADOPTED

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LEGAL AID

Ms. Kiteley presented the Report of the Legal Aid Committee of its meeting on February 13th, 1992.

28th February, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of February, 1992 at two o'clock in the afternoon, the following members being present: Frances P. Kiteley, Chair, Messrs. Ally, Bond, Ms. Campbell, Mr. Carter, Ms. Cohen, Ms. Curtis, Mr. Durno, Ms. Kehoe, Mr. Koenig.

A.
POLICY

1. ABT REPORT

The Legal Aid Committee continued its review of the Abt Report. The subject chapters were 5 and part of 9. The review will continue at the March meeting.

B.
ADMINISTRATION

1.(a) REPORT OF THE PROVINCIAL DIRECTOR FOR
THE NINE MONTHS ENDED DECEMBER 31, 1991

The Director's report for the nine months ended December 31, 1991 is attached hereto as SCHEDULE (A).

(b) ONTARIO LEGAL AID PLAN - 1992/93 BUDGET

The Legal Aid Committee recommends the adoption of the 1992/93 Budget for the Ontario Legal Aid Plan. The Budget, together with explanatory notes, is attached hereto as SCHEDULE (B).

Note: Motion, see page 128

(c) REPORT ON THE PAYMENT OF SOLICITORS
ACCOUNTS FOR JANUARY, 1992

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

(d) REPORT ON THE STATUS OF REVIEWS IN THE LEGAL
ACCOUNTS DEPARTMENT FOR JANUARY, 1991

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

28th February, 1992

(e) AREA COMMITTEES - APPOINTMENTS & RESIGNATIONS

APPOINTMENTS

Ottawa/Carlton

Jean G. Legault, solicitor
Lise Maisonneuve, solicitor

Oxford

William B. Dutton, retired pharmacist

York

Thomas Tordoff, solicitor
H. Markham Silver, solicitor
Herbert J. Stover, solicitor
Susan B. Switch, solicitor
Hugh McClaren Evans, solicitor
Janet Maceachen, solicitor
Karin E. Rinas, solicitor
Catherine Smee, solicitor
Pauline E. Green, solicitor
Betty Sherwood, teacher-librarian
Barbara Walker, retired school principal
Heather H. Comba, solicitor
Brian J. R. Grys, solicitor
Jacqueline Garrity, solicitor
Stephen Whitzman, solicitor
Nicholas A. Xynnis, solicitor
Philip Patterson, solicitor
Patricia Lucas, solicitor
Robert M. Rubba, solicitor
James C. Fleming, solicitor
Rebecca J. Rutherford, solicitor
Norman Michael Chorney, solicitor
Helen Kersley, solicitor
Peter V. DeJulio, solicitor
Dennis K. Lenzin, solicitor
Peter Connelly, solicitor
Steven R. Clark, solicitor
Faye E. McWatt, solicitor
Joseph H. Kappy, solicitor
Robert G. Bigelow, solicitor
Lawrence Allan Hadbavny, solicitor
Derek A. Danielson, solicitor
James John Burke, solicitor
Michael Simon Block, solicitor
Pamela J. Reardon, solicitor
Joseph Wright, solicitor
Sandra Gail Leonard, solicitor
Janette Mills, solicitor
Robert Charles Nuttall, solicitor
Judyth Rekai, solicitor
Michael P. Zaduk, solicitor

28th February, 1992

DECEASED

Frontenac

H. R. Sheppard

ALL OF WHICH is respectfully submitted

"F. Kiteley"
Chair

February 28, 1992

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

B-Item 1(a) Director's Report, Ontario Legal Aid Plan, Statement of Income and Expenditures, Nine Months Ended December 31, 1991 (\$000).
(SCHEDULE (A), Pages (2))

B-Item 1(b) 1992/93 Budget - Ontario Legal Aid Plan.
(SCHEDULE (B), Pages (6))

B-Item 1(c) Report on the Payment of Solicitors Accounts - January 1992.
(SCHEDULE (C), Pages (2))

B-Item 1(d) Report on the Status of Reviews in the Legal Accounts Department - January 31, 1992.
(SCHEDULE (D))

It was moved by Fran Kiteley, seconded by Carole Curtis that Item 1(b) under the Administration section re: 1992/93 Budget, be approved.

Carried

THE REPORT WAS ADOPTED

.....

Ms. Kiteley gave an oral report on the working of the steering committees in regard to the provincial government review of legal aid.

It was moved by Robert Carter, seconded by Paul Copeland that Convocation go in camera to receive certain information under the policy being that matters of negotiations with government be in camera.

The Treasurer ruled that the matter be heard in camera.

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"IN CAMERA"

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IN CAMERA Content Has Been Removed

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"IN PUBLIC"

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RESUMPTION OF THE MOTIONS ON SUSPENSIONS

The 3 motions on the suspensions from the Finance Committee Report presented by Mr. Howie earlier in the day were adopted.

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CONVOCATION ADJOURNED FOR A SHORT RECESS

.....

CONVOCATION RESUMED IN PUBLIC

.....

PRESENT:

The Treasurer, Bastedo, Campbell, Curtis, Elliott, Finkelstein, Howie, Kiteley, Lax, Mohideen, D. O'Connor, Rock, Somerville and Wardlaw.

.....

SPECIAL COMMITTEE ON REFORMS IMPLEMENTATION

Mr. O'Connor presented to Convocation the Report of the Special Committee on Reforms Implementation dated November 22nd, 1991. Convocation also had before it the previous Report on Reforms Implementation which was before Convocation on May 31st, 1991.

November 22nd, 1991 Report

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON REFORMS IMPLEMENTATION begs leave to report:

The Reforms Implementation Committee, consisting of Dennis O'Connor Q.C., Chair, June Callwood, Paul Lamek Q.C., Colin McKinnon Q.C., Allan Rock Q.C., Robert Topp and Roger Yachetti Q.C., assisted by staff members Margaret Angevine, Scott Kerr and Gavin MacKenzie, and by Professor Marilyn Pilkington, last reported to Convocation on May 31st, 1991. Since that date the Committee has met on four occasions, namely; June 13, June 25, September 4 and September 27, 1991. The Committee has devoted most of its time during these meetings to the subject of reforms to the Society's professional standards programme and the bulk of this report (Part 1) concerns those reforms. Other matters considered by the Committee are set out in Parts 2 and 3 of this report.

Part 1. Proposals arising out of the Report of the Professional Standards Committee

The Reforms Implementation Committee proposes to Convocation that it recommend to the Attorney General the following statutory amendments to provide for the regulation of professional standards of competence in the legal profession. These provisions are substantially based on the recommendations of the Professional Standards Committee in its report dated March 8, 1990, which was approved by Convocation on September 28, 1990, after being discussed with and approved by the County and District Law Associations in May 1990. The report of the Professional Standards Committee is attached as Appendix "A".

Rationale of the Proposals

The Law Society of Upper Canada has statutory responsibility for the regulation of the legal profession in Ontario. It regulates the competence of the profession at the entry level through its bar admission examinations. It also assists members of the profession to maintain competence through its continuing legal education programs, the practice advisory service, and the guidance provided by the Professional Standards Committee. A member of the Society who fails to meet standards of professional competence is in breach of Rule 2 of the Rules of Professional Conduct and may be disciplined for professional misconduct.

The proposals for regulating professional competence reflect two policies. The first policy, on which there appears to be broad consensus, is that concerns about professional competence should generally be dealt with through remedial rather than disciplinary procedures, provided that such an approach will adequately protect the interests of clients. The second policy reflected in the proposals is that the Law Society should have the statutory authority to inquire into the competence of members of the profession. This policy has been adopted with respect to other self-regulating professions such as the Ontario College of Physicians and Surgeons and the Barreau du Quebec. Both of these bodies provide for random investigations of competence. Such measures are, in the view of the Committee, an important addition to the profession's ability to regulate itself. The assumption that, once qualified for admission, every member of a profession will necessarily continue to maintain standards of competence in a rapidly changing legal environment, is not, in the view of the Committee, an assumption which can be justified.

Summary of the Proposals

The draft which follows provides a definition of standards of professional competence (s. 1). It provides for two types of practice review: (1) investigation of a member's practice where, as a result of complaints, errors and omissions claims or information obtained through audits or investigations, it appears that the member's competence to practise law is in issue (s. 2); and (2) random practice review, which would be initiated through the administration of a questionnaire (s. 3).

The draft specifies who will conduct a practice review (s. 4), the member's duty to co-operate (s. 5), and the contents of the reviewer's report (s. 6). If the member accepts the findings and recommendations made in the report, the matter can be settled by a professional competence panel consisting of a single elected benchler (s. 7(1)). Such a benchler may also hold a conference with the member and a representative of the Society in an effort to settle any issues

arising with respect to the report (s. 7(2)). Where the findings or recommendations are disputed, the matter proceeds to a panel consisting of one elected benchner and two other members of the Society (s. 8).

The draft specifies the orders that can be made (s. 11), the effect of non-compliance (s. 12), the extent of publication (ss. 9 and 13), and the availability of appointment of a trustee (s. 14), reinstatement (s. 15), appeal (s. 16) and referral from the Discipline Committee (s. 17).

Overlap between Professional Misconduct, Unsatisfactory Professional Practice and Professional Competence:

With the adoption of provisions for investigating and enforcing standards of professional competence, there would be four options available for the investigation of the professional conduct or competence of a member:

- (1) Individual complaints of unsatisfactory professional practice would be dealt with by the complaints process, including the Complaints Resolution Commissioner.
- (2) Gross neglect, a pattern of neglect, mistakes, or unsatisfactory professional practice in different matters, or a single instance of unsatisfactory professional practice which the solicitor has not taken reasonable steps to correct or resolve could amount to professional misconduct and be dealt with through the discipline process.
- (3) On the basis of complaints, errors and omissions claims, or information obtained through audits or other investigations, a member's competence to practise law could be investigated.
- (4) A random practice review programme aimed at monitoring and assisting members for purposes of maintaining acceptable levels of competency in the profession generally.

The competency investigation referred to in option 3 is a broader procedure which complements the investigation of specific complaints of unsatisfactory professional practice or misconduct. It enables the Law Society to investigate the underlying problem rather than focus solely on its specific manifestations.

The random practice review provisions enable the Society to assert a degree of quality control with respect to competency among members of the profession at large.

Although the competency procedures are intended to be remedial, it is clear that they carry the risk that the member's practice may be significantly restricted. Thus, complaints should generally be dealt with through the complaints and discipline processes. A competency investigation should not be initiated unless the Chair or Vice-Chair of Professional Standards is reasonably satisfied that the member's competence to practise law is in issue.

Draft Provisions:

Standards of Professional Competence

1. A member fails to meet standards of professional competence where there are significant deficiencies in the member's knowledge, skills, or office systems as reasonably required in order to advance and protect the interests of clients and provide a reasonable level of service to clients, given the nature of the member's practice.

Note: amendment, see page 141

Investigations of professional competence

2. The Chair or Vice-Chair of the Professional Standards Committee, if reasonably satisfied that the member's ability to meet standards of professional competence is in issue, on the basis of

(a) complaints made to the Society concerning the member's practice,

(b) errors and omissions claims with respect to the member's practice, and/or

(c) information obtained through audits or investigations conducted pursuant to this Act,

may appoint a person or persons to conduct a review of the member's practice.

Practice Review

3. (1) The Chair or Vice Chair of the Professional Standards Committee may on a random basis direct that a member's law practice be reviewed by a person or persons appointed for the purpose of ascertaining and reporting whether the member meets standards of professional competence in the rendering of professional services.

(2) The member shall be notified in writing of the review and be provided with a questionnaire concerning the nature and scope of the member's practice, the means by which the member maintains competence, and the member's practices in delivering services to clients. The member shall deliver the completed questionnaire to the Secretary of the Law Society within three weeks of the date of notice.

28th February, 1992

Practice reviewer

4. (1) A person appointed to conduct a review of a member's practice shall be

(a) a lawyer appointed to the staff of the Society, or

(b) a member of the Society appointed by the Professional Standards Committee to a panel of practice reviewers.

(2) A person appointed to conduct a review of a member's practice may be assisted by a person or persons with relevant expertise in office management, office systems or accounting.

Duty to co-operate

5. (1) A member shall co-operate fully with a review of the member's practice pursuant to s. 2 or s. 3, and shall answer all inquiries and produce all documents relating to the member's practice as are reasonably required by the person or persons appointed to conduct the review. Failure to comply with these obligations shall constitute professional misconduct.

Note: Amendment, see page 140

(2) A member's answers to inquiries made pursuant to subsection (1) are not admissible in any proceedings for professional misconduct or conduct unbecoming a barrister and solicitor.

Note: Amendments, see page 141

Reviewer's report

6. (1) The person or persons appointed to conduct a review of a member's practice shall report to the Chair of the Professional Standards Committee

(i) the findings made as a result of the review of the member's practice, including any significant deficiencies in the member's knowledge, skills, or office systems as reasonably required in order to

As a matter of policy, the reviewer should

(a) be experienced in the type of law practice under review,

(b) be from outside the locale, and

(c) be selected in consultation with the member whose practice is under review.

Guidelines will be developed for practice reviewers.

The provisions for practice review are intended to be remedial rather than punitive. Note, however, that a member would also be obliged to answer inquiries in a discipline investigation.

advance and protect the interests of clients, and provide a reasonable level of service to clients, given the nature of the member's practice and

(ii) recommendations made for the purpose of ensuring that the professional services provided by the member meet the standards of competence of the profession, which recommendations may include any of the matters provided for in section 10.

(2) The Chair of the Professional Standards Committee shall forthwith provide a copy of the report to the member whose practice has been reviewed.

Single Member Professional Competence Panel

7. (1) Where the member accepts the findings and recommendations made pursuant to section 6, and so notifies the Chair of the Professional Standards Committee, the Chair may appoint a panel consisting of one elected benchner to review the report and recommendations and make any orders arising therefrom as provided in section 11. At the discretion of the panel, the orders may be issued to the member in person or in writing.

(2) Where the member does not accept the findings and recommendations made pursuant to section 6, the Chair or Vice Chair of the Professional Standards Committee may appoint a panel consisting of one elected benchner to review the report and recommendations, to hear from the member, and from the Society and to consider the possibility of resolving any or all of the issues, for the purpose of settling appropriate orders as provided in section 11, or facilitating an expeditious hearing pursuant to section 8.

Professional Competence Panel

8. Where the member does not accept the findings and recommendations made pursuant to section 6, and the matters in issue are not concluded pursuant to section 7, the Chair or Vice Chair of the Professional Standards Committee shall appoint a panel composed of three members of the Society, at least one of whom is an elected benchner, to review the report and recommendations of the person or persons who reviewed the member's practice, to hear representations from the member and from the Society, and to hear any additional evidence relevant to the competence of the member.

28th February, 1992

Notice

9. The Secretary shall forthwith notify the member affected of the appointment of a Professional Competence Panel and shall give not less than seven days' notice of the date set for hearing.

In camera or public hearing

10. (1) Notwithstanding section 9 of the *Statutory Powers Procedure Act*, R.S.O. 1980, c. 484, a hearing held with respect to the competence of the member to practise law shall be held *in camera*, but if the member requests that the hearing be public, it shall be open to the public, except as provided in subsection (2).

(2) Where the panel is of the opinion that intimate financial or personal matters pertaining to the member's clients may be disclosed at the hearing, and that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of disclosure, the panel may hold the hearing concerning any such matter *in camera*.

Orders

11. (1) Where a Professional Competence Panel appointed pursuant to section 8 has found that the member fails to meet standards of professional competence within the meaning of section 1, it may by order, as it considers necessary in order to protect the member's clients and the public as it might be affected by the member's practice,

(a) suspend the member's rights and privileges, until and unless the member is reinstated pursuant to section 15, or

(b) limit the member's rights and privileges by prohibiting the member from practising law except in accordance with terms and conditions to which the member consents, which may include, but are not restricted to, the following:

(i) that the member enrol and participate in continuing legal education courses in specified subjects and/or in other programmes provided or approved by the Law Society;

28th February, 1992

(ii) that the member restrict the nature and/or scope of the member's practice, and/or enhance the resources available within the practice;

(iii) that the member practise law only under the supervision of another member appointed for that purpose by the Society;

(iv) that the member obtain professional advice and/or services in relation to the management of the member's practice;

(v) that the member report as directed on compliance with any term or condition by which the member's practice is limited and authorize other persons involved with the conduct of the member's practice to report thereon as directed;

(vi) that the member participate in any program, the purpose of which is to improve the overall competency and/or health of the member; and

(vii) that the member comply with any other term or condition that is just and appropriate;

(e) direct that the decision of the panel be referred to the Director of the Legal Aid Plan for review of the member's status on the Legal Aid Panel;

(f) direct that the member be removed from the panel of the Lawyer Referral Service;

(g) direct that the decision of the panel be referred to the Society's Certification Board, and any other body which certifies specialists in law;

(h) direct that the member's practice be inspected periodically by such person or persons appointed for that purpose by the Chair or Vice-Chair of the Professional Standards Committee; and

(i) give any other direction that is just and appropriate in the circumstances.

(2) At any stage of a hearing conducted pursuant to section 8, a Professional Competence Panel may refer the matter to the Chair or Vice Chair of the Professional Standards Committee with a recommendation

28th February, 1992

(a) that an inquiry be conducted into the capacity of the member, pursuant to section ***; or

(b) that the matter be referred to the Discipline Complaints Authorization Committee.

Non-compliance

12. Where it is alleged that a member has failed to comply with an order made pursuant to section 7 or section 11, the Chair or Vice-Chair of the Professional Standards Committee shall direct that a Professional Competence Panel composed of three members of the Society, at least one of whom is an elected benchler, be appointed to conduct a hearing into the matter. The provisions of sections 9 and 10 apply to such a hearing. If, after holding a hearing, the panel finds that the member has failed to comply with an order made pursuant to sections 7 or 11, the panel may modify the terms of the order or suspend the member in accordance with paragraph (1)(a) of section 11.

Publication

13. (1) The fact that a member is the subject of an inquiry pursuant to this part shall not be disclosed.

(2) Where a hearing into a member's competence has been open to the public, the findings, order and reasons of the professional competence panel shall be made public.

(3) Where a hearing has been held *in camera*, and a member's rights and privileges have been suspended, the Society shall make public the order of the professional competence panel, and the findings or reasons with respect thereto.

(4) Where a hearing has been held *in camera*, and a member's rights and privileges have been limited, the professional competence panel shall determine what aspects of the order shall be made public, in accordance with the need to protect the public.

Appointment of Trustee

14. Where a member's rights and privileges are suspended pursuant to section 7 or 11, the Society may apply for the appointment of a Trustee pursuant to s. ***.

Reinstatement

15. Where a member's rights and privileges have been suspended or limited pursuant to sections 7 or 11, an application to remove or vary the suspension or limitation may be made at any time after the expiry of any minimum time period specified pursuant to sections 7 or 11.

Appeal

16. Where a member's right to practise law is suspended pursuant to sections 11 or 12, the member may appeal to the designated appeal panel of Convocation. There shall be no appeal from any other decision of a Professional Competence Panel.

Referral from Discipline Committee

17. Where a discipline hearing panel seized of a complaint against a member is reasonably satisfied that the competence of the member to practise law is in issue, it may refer the matter to the Chair or Vice-Chair of the Professional Standards Committee, and may adjourn the discipline hearing pending a determination in accordance with the provisions of this part.

Part 2 Fines in Discipline Proceedings

In May 1991, your Committee was requested by Convocation to consider whether the imposition of fines in the discipline process might have adverse consequences for the Law Society under the Charter. Specifically, there was concern expressed that by imposing fines, the Law Society might risk its process being characterized as penal rather than regulatory, thus invoking the protections provided by s.11 of the Charter. Your Committee asked Professor Pilkington to canvass the issues and prepare an opinion for the Society. The full text of that opinion is reproduced at Appendix B of this report. In brief, the conclusions reached are as follows:

(i) Persons charged with discipline offences, even serious ones, do not receive the benefit of s.11 unless they are subject to penal consequences;

(ii) If a professional discipline statute does not provide for fines or imprisonment, s.11 will not apply to proceedings conducted under it.

(iii) Where a discipline statute does provide for fines, or some curtailment of freedom, the proceedings may continue to operate without the restrictions of s.11 of the Charter, provided the penalty is related to the regulatory purpose.

(iv) Fines may be either penal or regulatory.

(v) Regulatory bodies may impose fines, subject to two conditions, namely;

1. The fine must not be of a magnitude to redress the wrong done to society at large.

28th February, 1992

2. The imposition of the fine must be for "a particular private purpose".

(vi) Although it is difficult to distinguish between fines for a penal purpose and fines for a regulatory purpose, it appears that it is possible to justify fines as a lesser and effective sanction in the disciplinary process, provided that the amount of the fine is not unduly punitive.

(vii) Finally, although the basis upon which fines may be considered regulatory as opposed to penal is far from clear, there is only minimal risk involved in the Society's providing for fines as one of the possible sanctions in the discipline process.

Part 3 Final Phase of Implementation

Your Committee has reached the final phase of its work, namely the submission of proposals for legislative reform to the Attorney-General. Your Committee is of the view that in the course of this process issues may well arise which will require some further consideration by the Society and suggests that it remain in place to provide assistance and make recommendations to Convocation in this regard.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of November, 1991.

Chair

"D. O'Connor"
Chair

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

- Appendix "A" - Discussion Paper - Proposed changes in format to the Practice Review Programme, Professional Standards Committee, Approved by Convocation September 27, 1990. (Pages (5))
- Appendix "B" - Letter from Professor Marilyn Pilkington to Mr. Dennis O'Connor, Chair, Reforms Implementation Committee dated June 19, 1991 re: Charter implications of providing for fines in Discipline Proceedings. (Pages (4))

It was moved by Marc Somerville, seconded by Neil Finkelstein that the last sentence under the heading, Duty to co-operate, paragraph 5(1) "Failure to comply with these obligations shall constitute professional misconduct", be deleted.

This amendment was accepted by the Chair.

It was moved by James Wardlaw, seconded by Susan Elliott that the words "or fails to" be inserted before the word "provide" in paragraph 1, line 6, on page 3 under the heading Standards of Professional Competence.

Withdrawn

28th February, 1992

It was moved by James Wardlaw, seconded by Susan Elliott that in the same paragraph delete the word "or" after the word "skills" and add the words "or manner of practice", after the word "systems". The sentence would now read

"A member fails to meet standards of professional competence where there are significant deficiencies in the member's knowledge, skills, office systems or manner of practice as reasonably required in order to advance and protect the interests of clients and provide a reasonable level of service to clients, given the nature of the member's practice."

This amendment was accepted by the Chair.

The Chair accepted an amendment to paragraph 5(2) on page 5 of the Report that at the beginning of the sentence the words "Unless the member consents" be added.

It was moved by Neil Finkelstein, seconded by Marc Somerville that paragraph 5(2) on page 5 of the Report be redrafted to grant immunity with respect to civil and criminal proceedings as well as professional misconduct.

This amendment was accepted by the Chair using the same wording as in paragraph (10)(a) of Part X of the Report of the Special Committee on Reforms Implementation dated February 28th, 1992.

THE REPORT AS AMENDED WAS ADOPTED

Gratitude and appreciation was extended to Mr. O'Connor and Professor Pilkington for the work done on the Reforms Implementation.

.....

RESEARCH AND PLANNING COMMITTEE

Mr. Bastedo presented the Reports of the Research and Planning Committee of its meetings on January 9th and February 13th, 1992.

Meeting of January 9th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of January, 1992, at 8:00 a.m., the following members being present: T. Bastedo (Chair), L. Brennan, P. Copeland, C. Curtis, S. Elliott, A. Feinstein, S. Goudge, the Hon. A. Lawrence, R. Manes, C. McKinnon, F. Mohideen, D. Scott, R. Smith.

Also present: A. Brockett, S. McCaffrey, R. Tinsley.

A.
POLICY

A.1. LIFE BENCHERS

A.1.1. At the November 1991 meeting of Convocation, the Research and Planning Committee was asked to consider the range of possible qualifications for life bencher status that arise from Convocation's February 1991 resolution on the matter. Your Committee was asked to make a recommendation.

A.1.2. Recommendation

It is recommended that the sole qualification for life bencher status be the completion of a total of twelve years service as an elected bencher and that Convocation therefore seek the following amendment to the *Law Society Act*, R.S.O. 1990, c. L 8:

Repeal paragraphs 5 and 6 of subsection 12(1) and substitute the following paragraph:

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

A.1.3. Reasons for the Recommendation

A.1.3.1. Paragraphs 5 and 6 of subsection 12(1) of the *Law Society Act* currently read as follows:

12 (1) The following, if and while they are members, are benchers by virtue of their office:

....

5. Every person who was elected a bencher at three quinquennial elections and served as a bencher for fifteen years and became a bencher by virtue of his or her office under paragraph 4 of section 5 of *The Law Society Act* as re-enacted in 1964.

6. Every person who is elected a bencher at four elections and who serves as a bencher for sixteen years.

A.1.3.2. On February 15, 1991, Convocation resolved that:

The qualifications for appointment by the Law Society of Upper Canada as a life bencher be amended so a bencher who has been elected for at least three four-year terms and has served for twelve years as a bencher, will be eligible to become a life bencher at the completion of the third four-year term.

- A.1.3.3. On November 22, 1991, Convocation referred certain matters arising from this resolution to the Research and Planning Committee. The issues can be expressed in the form of four questions:
- A.1.3.3.1. If an election is to count towards the requirements for life bencher status, must the person come within the first twenty candidates (either within or without Metropolitan Toronto) in a quadrennial election, or will election by Convocation to fill a vacancy meet the requirements?
- A.1.3.3.2. If a person is "elected in Convocation" to fill a vacancy, will the years served as a bencher following that election count towards the required twelve?
- A.1.3.3.3. If a person is elected (either within the first twenty or to fill a vacancy) and subsequently resigns before the end of the four-year term, will the year served as a bencher count towards the required twelve?
- A.1.3.3.4. When the basic qualification is reduced from sixteen to twelve years, will persons who are no longer benchers but who have completed twelve years of service in the past, be eligible for life bencher status or will the status only be available to persons who, at the time of exercising the option, are serving as benchers?
- A.1.3.4. Your Committee is of the view that, for qualification as a life bencher, there should be no distinction between those who are elected at a quadrennial election and those who are subsequently elected by Convocation to fill a vacancy. Your Committee is also of the view that if the qualification is expressed in terms of the total length of time to be served, there is no need to specify the number of occasions on which a person must be elected.
- A.1.3.5. Your Committee is of the view that where a bencher serves for only part of a four-year term (whether because of election to fill a vacancy or because of resignation before the end of the term) the time served should count towards the total time required for qualification as a life bencher.
- A.1.3.6. Your Committee concluded that the intent of the resolution adopted by Convocation in February 1991 would be fulfilled if the sole qualification were service as an elected bencher for a total of twelve years.
- A.1.3.7. To make clear that all service as an elected bencher counts towards the total (whether full four-year terms or parts of a term) the Committee recommends that the qualification be expressed in terms of a total number of days.
- A.1.3.8. Three four-year terms will include three leap years and will therefore amount to a total of 4,383 days: $(365 \times 12) + 3$.

- A.1.3.9. Your Committee is further of the view that, when the qualification is altered from sixteen to twelve years, any person who, although not currently serving as a benchner, is still a member and who has, in the past, completed 4,383 days service as an elected benchner, should be entitled to become a life benchner.
- A.1.3.10. Benchners who have already become life benchners under the provisions of paragraph 5 (fifteen years) or paragraph 6 (sixteen years) of subsection 12(1) will have fulfilled the proposed new requirement of 4,383 days. If the recommendation is adopted and enacted, such persons will therefore continue to be life benchners.
- A.1.4. Impact of the Recommendation
- A.1.4.1. There are six elected benchners, currently serving, who have already been elected at three (or more) quadrennial elections and who have already completed three four-year terms. In whatever way the February 1991 resolution is interpreted, these six benchners will be eligible for life benchner status under its terms. The recommendation in this report does not therefore affect the eligibility of these six persons.
- A.1.4.2. There are five elected benchners, currently serving, who have already been elected at three quadrennial elections, who have completed two four-year terms and who will complete a third four-year term if they serve to the end of the current term (1995). In whatever way the February 1991 resolution is interpreted, these five benchners will be eligible for life benchner status under its terms provided they serve to the end of the current four-year term. The recommendation in this report does not therefore affect the eligibility of these five persons.
- A.1.4.3. There is one elected benchner, currently serving, who has already been elected at three quadrennial elections, who has completed two four-year terms and also a period of service that was less than a full four-year term (resulting from an election to fill a vacancy). This benchner will complete a total of twelve years service before the end of the current four-year term (1995). The recommendation in this report, if implemented, would therefore make this person eligible sooner than if the strict completion of three full four-year terms were to be required.
- A.1.4.4. There is one elected benchner, currently serving, who has been elected at two quadrennial elections and who also has a period of service that was less than a full four-year term (resulting from an election to fill a vacancy). If that benchner completes the current four-year term and is re-elected in the 1995 quadrennial election, the recommendation in this report, if implemented, would make that benchner eligible for life benchner status during the course of the 1995-1999 term (i.e. before the completion of a third full four-year term in 1999).

- A.1.4.5. There are four persons who are not currently serving as benchers who have completed more than twelve year service as benchers; two of these four are judges. The terms of the recommendation in this report would make the two who are not judges eligible for life bencher status immediately the Act is amended; the recommendation would also make the two judges eligible when they resume their membership in the Law Society.

B.
ADMINISTRATION

B.1. DISPUTE RESOLUTION SUBCOMMITTEE

- B.1.1. The Alternative Dispute Resolution Subcommittee, appointed in June 1991, has recommended that its name be changed to the Dispute Resolution Subcommittee.
- B.1.1.1. It is the Subcommittee's view that the use of the word "Alternative" perpetuates the tendency to think of all other methods of dispute resolution as set over against litigation, secondary to litigation and perhaps optional.
- B.1.1.2. The Subcommittee wishes to promote an understanding of dispute resolution in which litigation is seen as one among a range of options available to every lawyer. Without favouring one method above others, and without denying the proper role of litigation, the Subcommittee wishes to bring all methods to the attention of the profession and the public. It is the Subcommittee's view that this process will be assisted if the word "Alternative" is dropped from the Subcommittee's title.
- B.1.2. Your Committee approved the change of name for the Subcommittee.
- B.1.3. The Subcommittee has commissioned and received a glossary of dispute resolution terms and a spectrum in which different dispute resolution methods are ordered according to the degree of control exercised by the parties. This material will be included in the Subcommittee's final report.
- B.1.4. Working Groups concerned with Public Information, Education, Insurance and Professional Conduct are continuing to meet.

C.
INFORMATION

C.1. STRATEGIC PLANNING CONFERENCE: OCTOBER 29-31, 1992

- C.1.1. In accordance with the proposal adopted by Convocation on November 22, 1991, the Geneva Park Conference Centre has been reserved for a Strategic Planning Conference for the dates Thursday, October 29 to Saturday, October 31, 1992.

- C.1.2. A Subcommittee (Abraham Feinstein, David Scott, Stephen Goudge, Ronald Manes) is preparing a proposed agenda for the conference.

C.2. VOLUNTARY PRO BONO SUBCOMMITTEE

- C.2.1. In March 1991, Convocation approved a proposal for a twelve-month pilot project under which a Pro Bono Lawyer Referral Service would be operated for non-profit organizations in selected counties.
- C.2.2. The Hamilton Law Association and the Middlesex Law Association offered to conduct pilot projects in their respective areas.
- C.2.3. As at November 19, 1991, 89 lawyers in Hamilton-Wentworth and Middlesex had enroled in the pilot project and offered to make their services available through the Pro Bono Lawyer Referral Service. On the strength of this response, the Subcommittee agreed that the pilot project should go ahead.
- C.2.4. Publicity material was prepared by the Communications Department and mailed to approximately 600 non-profit organizations in Hamilton and approximately 400 non-profit organizations in London.
- C.2.5. The pilot project effectively commenced on January 1, 1992.

C.3. KEEPING THE PROFESSION INFORMED ABOUT TECHNOLOGICAL DEVELOPMENTS

- C.3.1. In June, 1991, the Professional Standards Committee recommended that the Research and Planning Committee consider the role of the Law Society in evaluating the impact of technological developments on the legal profession. The Professional Standards Committee was of the view that further attention should be given to the function that the Law Society could play in assisting and updating the legal profession on recent technological developments.
- C.3.2. Susan Elliott was appointed to serve as a Subcommittee of one to report to the Research and Planning Committee on this matter. As a first step, she consulted with Sue McCaffrey, staff lawyer in the Professional Standards Department, with a view to compiling a report on the steps which the Law Society currently takes to keep its member informed of technological developments.
- C.3.3. A preliminary report has been received and discussed. The Subcommittee is continuing to assemble information and will ascertain what is being done by other law societies, by the CBA and the ABA.

C.4. TRANSITIONS REPORT

- C.4.1. In response to a request from the Women in the Legal Profession Committee, the recommendations in the Transitions Report have been reviewed to determine whether there are matters in that report that might appropriately be addressed by the Research and Planning Committee.

28th February, 1992

- C.4.2. There are recommendations in the Transitions Report (some of which involve policy analysis) which have the potential profoundly to affect the way in which the practice of law is conducted. Your Committee intends to meet with representatives of the Women in the Legal Profession Committee to decide how the Law Society's approach to these recommendations should be co-ordinated, to discuss priorities and to agree on which committee should be responsible for particular initiatives.

ALL OF WHICH is respectfully submitted

DATED this 24th day of January, 1992

"T. Bastedo"
Chair

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of February, 1992, at 8:00 a.m, the following members being present: T. Bastedo (Chair), L. Brennan, S. Elliott, A. Feinstein, S. Goudge, C. McKinnon, F. Mohideen, D. Scott, R. Smith.

Also present: S. O'Connor, R. Tinsley, A. Brockett.

A.
POLICY

A.1. LIFE BENCHERS: AMENDMENT OF RECOMMENDATION

- A.1.1. In the report of its meeting held on January 9, 1992, your Committee recommended that the *Law Society Act* be amended to provide that the sole qualification for life bencher status be the completion of a total of twelve years service as an elected bencher. The reasons for this recommendation, and its potential impact, were fully set out in the Committee's January report.
- A.1.2. The wording recommended in the January report expressed the requirement as "a total of four thousand, three hundred and eighty-three days service". This is the number of days in twelve years. After the meeting of January 9, it was pointed out that it is possible for a bencher to have served three full terms and yet to be some days short of a total of 4,383. This arises because the term of office begins and ends with the first regular Convocation following the election, a fluctuating date which can result in a term being some days short of four years.
- A.1.3. It is therefore proposed that the words "three full terms or" be added to the text of the recommended amendment and that there be a further paragraph defining a "full term".

A.1.4. Revised Recommendation

It is recommended that the sole qualification for life benchers status be the completion of three full terms or a total of twelve years service as an elected benchers and that Convocation therefore seek the following amendments to the *Law Society Act*, R.S.O. 1990, c. L 8:

1. Repeal paragraphs 5 and 6 of subsection 12(1) and substitute the following paragraph:

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

2. Add, at an appropriate part of section 12:

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

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

C.1. LAY BENCHER COMMITTEE

- C.1.1. A suggestion has been made that the Committee should consider the merits of recommending to Convocation the establishment of a Lay Benchers Committee which would provide a formal structure within which lay benchers could meet and report to Convocation.

- C.1.2. Your Committee has invited Ms. Graham, as a representative of the lay benchers, to respond to the suggestion.

C.2. RESPONSIBILITIES OF BENCHERS, STAFF AND COMMITTEES

- C.2.1. At recent meetings, your Committee has been considering the respective responsibilities of benchers, staff and committees. The Committee has received copies of the following documents:

28th February, 1992

First part of the preliminary report of the Special Committee on Convocation ("Arthurs Committee"), December 16, 1980.

Extracts from a Review of the Secretariat of the Law Society of Upper Canada conducted by Peat, Marwick & Partners (March 1981).

Report of the Benchers Ad Hoc Committee on the Peat, Marwick & Partners report (May 15, 1981).

Extract from the Minutes of Convocation, July 16, 1981.

Proposals on Committee Structure and Management Responsibilities (as amended and adopted by the Research and Planning Committee, August 30, 1990).

Organizational chart of the Law Society (December 16, 1991).

C.2.2. The following questions have arisen in discussion:

- What are the responsibilities of benchers?
- What are the responsibilities of the staff?
- What is the relationship between staff and benchers?
- What is the relationship between staff and members of the profession?
- What is the management structure and style of the Law Society?
- How does the management interact with benchers?

C.2.3. It was noted that when raising similar questions, the Benchers' Responsibilities Subcommittee (May 1991) had recommended that an essential first step was a study of the limits of the proper role of the Law Society.

C.2.4. Your Committee considers it timely that the questions and proposals in the reports of the various committees that have studied the responsibilities of benchers, committees and staff should be reconsidered with a view to taking action. The Chair has therefore been asked to discuss with the Treasurer the desirability of appointing a committee to consider the broad issues of:

- a. The proper responsibilities of the Law Society.

28th February, 1992

- b. The appropriate roles of benchers, committees and staff in carrying out those responsibilities.

ALL OF WHICH is respectfully submitted

DATED this 28th day of February, 1992

"T. Bastedo"
Chair

THE REPORTS WERE ADOPTED

.....

INSURANCE COMMITTEE

Mr. Campbell presented the Report of the Insurance Committee of its meeting on February 13th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of February, 1992 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Howie, Bragagnolo, Epstein, Cass, Scace, Wardlaw and Strosberg.

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

ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director's Monthly Report is attached as Appendix "A".

2. E & O FINANCIAL REPORT

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

3. IMPACT OF INCREASE IN CLAIM FREQUENCY AND SEVERITY: REVIEW OF MANDATORY PROGRAM

The substantial increase in both claim frequency and severity during the eighteen month period ending December 31, 1991 has given rise to the creation of a Sub-Committee consisting of Colin Campbell, Phil Epstein and James Wardlaw to review the LSUC Mandatory Program with particular attention focusing on short and long term loss prevention measures, possible levy rating amendments and consideration of an additional supplementary levy. In addition to the Sub-Committee activity Mr. Campbell and the Director have prepared a comprehensive communication to the profession detailing the status of the Errors & Omissions

28th February, 1992

Program and the impact of this unprecedented increase in claim activity. (See Appendix "C").

4. LAW SOCIETY OF NEWFOUNDLAND'S (LSNFLD) REQUEST TO RECEIVE COPIES OF INSURANCE COMMITTEE REPORTS TO CONVOCATION

The Director recently met with representatives of the LSNFLD who requested that they receive copies of all LSUC Insurance Committee Reports to Convocation to assist in keeping the LSNFLD current on matters impacting the Mandatory Errors & Omissions Program in which the LSNFLD and its members participate. Your Committee recommends providing the Benchers of the LSNFLD with copies of Insurance Committee Meeting Agendas and Reports to Convocation.

5. OUTSTANDING ITEMS

(a) Coverage for members acting as Mediators and Arbitrators

A Sub-Committee of the Research and Planning Committee on alternate dispute resolution methods has requested that the LSUC Mandatory Errors & Omissions Program provide full coverage for members acting as Mediators or Arbitrators. Your Committee has approved this request in principle subject to review and acceptance of the required amendments to the LPIC Professional Liability Insurance Policy to be tabled at the March 1992 Committee Meeting.

(b) Errors & Omissions Levy: Part-time Lawyers / Exemptions and Rebates

Last Spring a Sub-Committee was created to consider reduced levies for lawyers engaged in part-time practice as well as levy exemptions for members on maternity leave and members unable to practice due to illness. The Sub-Committee recommendations were adopted by Convocation on September 27, 1991. A new Sub-Committee was subsequently created to consider expanding entitlement to an exemption to include leaves of absence for reasons other than maternity leave and illness. On this subject, Denise Bellamy, Chair of the Women in the Legal Profession Committee corresponded with the Chair of the Insurance Committee requesting consideration be given to several items. Your Committee recommends postponing further deliberation of this matter until next year in light of the recent unprecedented increase in claim activity and the resulting impact of this on the Errors & Omissions Program.

ALL OF WHICH is respectfully submitted

DATED this 28th day of February, 1992

"C. Campbell"
Chair

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

- Item 1 - Financial Report - Net Claim Summary January 1, 1991 - January 1, 1992. (Appendix "A")
- Item 2 - Report - Errors & Omissions General Expense Budget, The Seven Month Period Ending January 31, 1992 (prepared February 13, 1992). (Appendix "B")

28th February, 1992

- Item 3 - Memorandum to the Profession, February 20, 1992, re: Insurance
Update and loss prevention. (Appendix "C", pages 1 - 4)

THE REPORT WAS ADOPTED

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SPECIAL COMMITTEE ON PROPOSED CHANGES TO THE ONTARIO LABOUR RELATIONS ACT

Mr. Somerville presented a Report of the Special Committee dated February 28th, 1992 for information purposes.

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The following Reports were deferred to March Convocation:

French Language Services Committee (2 Reports)
Special Committee on Contingency Fees
Investment Committee
Women in the Legal Profession Committee
Certification Board (2 Reports)
County and District Liaison Committee (2 Reports)
Professional Standards Committee (2 Reports)
Lawyers Fund for Client Compensation Committee
Unauthorized Practice Committee (2 Reports)
Communications Committee

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CONVOCATION ADJOURNED AT 5:25 P.M.

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Confirmed in Convocation this *27th* day of *March*, 1992
1992.


Treasurer