

MINUTES OF SPECIAL CONVOCATION

Tuesday, 29th August, 1995
9:00 a.m.

PRESENT:

The Treasurer (E. Susan Elliott), Aaron, Adams, Armstrong, Backhouse, Banack, Bellamy, Bobesich, Carey, Carpenter-Gunn, Carter, R. Cass, Cole, Copeland, Cronk, Crowe, Curtis, Eberts, Epstein, Farquharson, Feinstein, Finkelstein, Gottlieb, Goudge, Harvey, Lamont, Lawrence, Lax, Legge, MacKenzie, Marrocco, Millar, Murphy, Murray, S. O'Connor, Pepper, Puccini, Richardson, Ross, Ruby, Sachs, D. Scott, I. Scott, Sealy, Stomp, Strosberg, Swaye, Thom, Topp, Wardlaw, Wilson, Wright and Yachetti.

.....

.....

IN PUBLIC

.....

ADMISSIONS AND MEMBERSHIP COMMITTEE

Meeting of August 28, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS AND MEMBERSHIP COMMITTEE begs leave to report:

Your Committee met on Monday, the 28th of August, 1995 at 6:30 p.m., the following being present: Ms. Angeles and Messrs. Banack and Swaye.

Also present: M. Angevine and P. Gyulay

B.
ADMINISTRATION

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

B.1.1. Bar Admission Course

B.1.2. The following candidate having successfully completed the 36th Bar Admission Course now has filed the necessary documents and paid the required fee and applies to be called to the Bar and to be granted a Certificate of Fitness at Special Convocation on Tuesday, August 29th, 1995:

29th August, 1995

Ponnambalam Kayilasanathan

Approved

ALL OF WHICH is respectfully submitted

DATED this 29th day of August, 1995

G. Swaye
Chair

It was moved by Mr. Lamont, seconded by Mr. Murray that the Report of the Admissions and Membership Committee be adopted.

Carried

THE REPORT WAS ADOPTED

CALL TO THE BAR

The following candidate was presented to the Treasurer and Convocation and was called to the Bar by the Treasurer and the degree of Barrister-at-Law was conferred upon him.

Ponnambalam Kayilasanathan

36th Bar Admission Course

.....

LEGAL AID

TREASURER'S REMARKS

The Treasurer advised that there had been extensive consultation on the legal aid issue with the profession throughout July and August by way of meetings, a survey, letters and phone calls as well as meetings with the government.

The Treasurer set out the procedure to be followed by Convocation in dealing with the Legal Aid Report.

Mr. Topp rose on a Point of Personal Privilege objecting to the meeting which took place on August 28th.

Mr. Gottlieb also rose on a Point of Personal Privilege expressing his concern over the issues to be dealt with by Convocation.

The Treasurer responded to the comments made by Messrs. Topp and Gottlieb.

LEGAL AID COMMITTEE REPORT

Meeting of August 22, 1995

Mr. Goudge presented the Report and Recommendations of the Legal Aid Committee for Convocation's approval.

29th August, 1995

He proposed that after the debate of the Report that the Benchers vote separately on the following Recommendations -

- #5. - Elimination of payment for pre-trial meetings with Crown Attorneys
- #8. - Payment of one service per half day
- #12. - Application fee
- #14. - Creation of Standards of Practice
- #15. - Creation of Hard Caps
- and #16. - Elimination of most payments for travel by counsel

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 Tuesday, the 22nd of August, 1995, at 1:00 p.m. the following members being present: Stephen Goudge, Chair, R. Armstrong, M. Buist, H. Burroughs, S. Cooney, P. Copeland, C. Curtis, D. Fox, D. Fudge, L. Hart, R. Lalonde, M. Stanowski and B. Sullivan.

S. Elliott, Treasurer of the Law Society was also in attendance as were S. Bruce Durno, President of the Criminal Lawyers Association, Richard Tinsley, Gemma Zecchini and Rosemary Hnatiuk from the Law Society.

Raoul Boulakia and Susan Woolner from the Refugee Lawyers Association and Susan Switch from the Family Law Association also attended.

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

A.
POLICY

A.1. The following proposals were considered by the Legal Aid Committee:

FAMILY LAW

1. Prior to going to court, applications to vary support must proceed to a settlement conference. (See Page 1 - of Legal Aid Consultation Report)

SAVINGS FISCAL/YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
\$870,000	\$2,250,000	\$2,500,000

Applications to vary support orders is a growing area of family law expenditure. Consideration of the process by family law practitioners suggests that the current procedure, averaging about \$1,400 per Legal Aid certificate in early 1995, could be made much more efficient if focused into an early settlement meeting before applications to court are authorized. Provided the parties have their disclosure available, and given the relatively high threshold needed for change, an Area Director, informed of the views of the local bench, could probably settle many applications for variation of support in a short meeting conducted early in the process.

29th August, 1995

The responding party, advised of the time and place of the proposed meeting by a letter from the Area Director enclosing the moving party's financial statement, would likely find it in their interest to attend. If the responding party does not have counsel, the area office could arrange for the assistance of duty counsel.

In one area where a pilot project is underway, local welfare or family benefits workers have made it a practice to attend when the responding party is in receipt of public assistance. This helps significantly to produce early resolutions.

The Family Support Plan will agree to treat settlements reached as amendments to existing orders which become effective on filing with the court when properly executed and witnessed.

The moving party's lawyer would initially be authorized for up to five hours to interview the client, contact Legal Aid, communicate with the client and the other side, prepare the financial statement, review the documentation, prepare for the settlement meeting, reporting and documenting the settlement, and for an opinion letter if required, plus the time for the actual attendance at the settlement meeting. No services in relation to a court application would be covered by the initial authorization.

The Committee approved this proposal unanimously.

2. Eliminate certificates for divorce. Disbursements would continue to be covered for clients who are in receipt of family benefits (FBA) or general welfare (GWA). This will be effective as of July 1. (See page - 2 - of Legal Aid Consultation Report)

SAVINGS FISCAL YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
\$2,191,000	\$7,285,000	\$10,472,000

This option does not affect family law services other than the obtaining of the actual divorce. Disbursements would continue to be covered for clients who are in receipt of family benefits or welfare. It is anticipated that these clients will receive assistance from lawyers on a pro-bono basis, court personnel and the Legal Aid Divorce Office.

The Committee approved this proposal unanimously.

IMMIGRATION AND REFUGEE LAW

3. A reduction by 10 hours in the time allowed to prepare for hearings before the Refugee Division and the elimination of the allowance for travel time or interpreters in immigration cases. (See Page - 3 - of Legal Aid Consultation Report)

SAVINGS FISCAL/YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
\$413,000	\$1,925,000	\$2,750,000

29th August, 1995

Hearings

In this proposed measure the current maximum for preparation for hearings before the Refugee Division will be reduced from 25 hours before the first day of the hearing to a total of 15 hours.

A reduction of ten hours in preparation time for Refugee Division hearings for the fiscal year 1995/96 would have resulted in approximately 51,535 extra hours being "over maximum" and required the exercise of discretion before payment could be made. Even if 25% of those hours were paid through a discretionary increase, there would be a savings of 75% of those hours, or approximately \$2.7 million.

There are two principal factors that justify a decrease of 10 hours. First, prior to a hearing before the Refugee Division, counsel will already have performed, and been entitled to bill separately for, a substantial part of the preparation required to present the client's case at the hearing. This is because counsel will have prepared the Personal Information Form (PIF) that is filed with the Immigration and Refugee Board before the hearing begins, and, in some cases, prepared a letter of opinion to the Plan as to the merits and likelihood of success of the refugee claim. Counsel is entitled to bill a maximum of 2.5 hours for an initial interview, 4 hours for the preparation of the PIF and 3 hours for the preparation of an opinion letter.

Second, an analysis of the average completed case found that the cost to the Plan for cases before the Refugee Division reveals that, for the fiscal year 1994/95, the number of hours paid was almost 10 hours below the current maximum. The significant distinguishing factor between the cases paid over and below the maximum was the exercise of discretion by the Legal Accounts Officer.

It is also recommended that there be special guidelines for the exercise of discretion in refugee cases both before the Refugee Division and the Federal Court. For example, when a refugee lawyer represents a number of clients originating from the same country, economies of research and preparation time that result from the re-use of materials and from accumulated knowledge are expected to be passed along to subsequent clients resulting in cost savings.

Interpreters

It is recommended that the allowance for travel time for interpreters be eliminated, and that the maximum for interpreter time, without seeking authorization, be decreased to 10 hours from the current maximum of 20 hours.

Where interpreters are not available within a reasonable distance and to refuse to pay travel time would deprive the individual of the services of an interpreter, the Legal Accounts Officer has discretion to approve travel time as an extraordinary disbursement.

The Committee approved this proposal unanimously.

OTHER CIVIL LAW

4. The elimination of coverage for wrongful dismissal cases. (See page - 4 - of Legal Aid Consultation Report)

SAVINGS FISCAL YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
\$104,000	\$420,000	\$600,000

29th August, 1995

It is perceived that clients with meritorious cases will be able to retain counsel privately.

The Committee approved this proposal by a vote of 7 in favour and 6 against.

CRIMINAL LAW

5. The elimination of payment for pre-trial meetings with Crown Attorneys. The government will be requested to require that pre-trials with Crown Attorneys be available by telephone. (See Page - 5 - of Legal Aid Consultation Report)

SAVINGS FISCAL YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
\$350,000	\$800,000	\$1,000,000

This measure means that counsel will no longer be able to bill for time spent in addition to the block fee in criminal cases. Counsel are now allowed to bill on an hourly basis for these meetings. Counsel would still be permitted to bill for meetings with judges.

The Committee approved this proposal by a vote of 8 in favour and 4 against.

6. Establish budgets, after consultation, for big criminal trials where costs are expected to exceed \$20,000 for single accused and \$50,000 for multiple accused. (See Page - 6 - of Legal Aid Consultation Report)

SAVINGS FISCAL YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
\$1,092,000	\$2,548,000	\$3,640,000

Historically, the Plan has managed civil but not criminal cases. It is now proposed that the Plan begin this process in the criminal context with big cases.

At the outset in specified trials, counsel would be required to attend a meeting where a proposed budget would be discussed. The following criteria would apply:

- a. In any case where counsel anticipates the total fees and disbursements will exceed \$20,000 (except in murder cases where the threshold is \$30,000, and in any case with multiple accused where the anticipated total cost for the case is \$50,000 or more) counsel would be required to attend a meeting to discuss budgeting for the case.

With 146 certificates over \$20,000 in 1994/95, there would have been roughly fifty meetings on cases.

- b. The meeting would be attended by the defense counsel, Area Director and at least one member of the Area Committee familiar with criminal cases of similar complexity.

- c. Those present would attempt to reach a consensus on the funds to be allotted to the case having regard to the anticipated length of the trial, complexity of the issues, experts required, other disbursements, travel, the use of junior counsel and co-counsel, and, to a minor extent, any resolution offer that has been made.
- d. The budget would be based upon the anticipated cost of the trial including Charter motions, other voir dires anticipated and defence evidence. In cases of private retainers, the client is advised of the above factors and decisions are made regarding funds available for the defence.
- e. If no agreement is reached the Area Director would determine the budget.
- f. Counsel would have a right of appeal to the Provincial Director.
- g. Counsel would present an oral outline of the case.
- h. Counsel would be required to request a meeting as soon as the anticipated cost figure approaches the threshold. This will usually be after full disclosure and before dates are set for the preliminary inquiry.
- i. The Committee could require a follow-up meeting at a later date, but it is anticipated that if the case is on budget, there would be no further meeting. When over budget, the onus would be on the defence to request a further meeting.

The Committee approved this proposal unanimously.

- 7. More extensive use of duty counsel at bail hearings. (See Page - 6 - of Legal Aid Consultation Report)

SAVINGS 1995/96	SAVINGS 1996/97	ANNUALIZED SAVINGS
\$1,529,000	\$2,910,000	\$3,000,000

Duty counsel would be expected to conduct all bail hearings, but a lawyer could be paid for doing a bail hearing if he or she could demonstrate that there were reasons why the duty counsel was not equipped to act.

The current base rate block fee for doing a contested bail hearing is \$236.00. The base rate for a consent release at the bail hearing, or a consent detention order is \$126.00.

This proposal was defeated by a vote of 5 in favour and 6 against.

- 8. An amendment to the Criminal Tariff to provide that lawyers would not be paid for doing more than one service in one half day. (See Page - 7 - of Legal Aid Consultation Report)

SAVINGS FISCAL/YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
\$1,500,000	\$4,500,000	\$5,000,000

29th August, 1995

Under the Legal Aid Plan, it is only criminal lawyers who are able to bill for more than one court appearance per half day. Counsel fees for a half day are available even for a very brief court appearance, assuming something more complicated than an adjournment occurs.

Many of the big billers to Legal Aid are doing a high volume practice. Many of them, doing mainly guilty pleas, are earning significantly more than those who are doing serious criminal trial work. The vast majority of the top billers to Legal Aid in the 1994/95 fiscal year (90 lawyers billed the Plan more than \$200,000) practice criminal law.

If criminal lawyers are no longer allowed to bill for more than one service per half day, it is believed that there would be significant savings available to the Plan. Such a change in billing process should not affect the availability of counsel to accused persons and will tend to bring about some horizontal equity between the Legal Aid earnings of the criminal bar doing guilty pleas, the criminal bar doing serious cases, and the Legal Aid earnings of the family, refugee and civil bars.

The following examples demonstrate how that proposal would work:

<u>Court Portion of Services Performed in One Morning</u>	<u>Present Billing to Legal Aid</u>	<u>Proposed Billing to Legal Aid</u>
Type I Offence Trial	\$734 Plus experience	\$734.00 Plus experience
Contested bail hearing	\$236 Plus experience	\$236.00-\$208.50 =\$27.50 Plus experience
Type II Offence	\$208.50 Plus experience	\$208.50-\$208.50 = 0
Type I Offence Guilty plea	\$442.00 Plus experience	\$442.09-\$208.50 =\$233.50
TOTAL	\$1,622.50	\$997.00
Bail Review	\$348.00 Plus experience	\$348.00 Plus experience
Contested bail hearing	\$236.00 Plus experience	\$236.00-\$208.50 = \$27.50 Plus experience
Guilty plea Type I Offence	\$442.00 Plus experience	\$442.00-\$208.50 = \$273.50 Plus experience
TOTAL	\$1,024.00	\$609.00

The Committee approved this proposal by a vote of 7 in favour and 4 against.

9. Payment for services of junior counsel should be changed.

SAVINGS FISCAL YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
\$15,000	\$40,000	\$40,000

Junior counsel are now paid at the reduced rates unless they participate in the trial during the day in which case they are paid at their full rate. Junior counsel should be paid at the reduced rate regardless of their participation during the day. The only exception is when senior counsel does not attend for the entire day in which case junior counsel gets their full rate.

It is further recommended that a review be conducted of the Regulations and Guidelines in the junior counsel area. The criteria should be whether the accused can be adequately defended by one counsel.

The Committee approved this proposal unanimously.

10. Criteria should be established which would preclude the retention of co-counsel except in the most exceptional of cases.

SAVINGS FISCAL YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
\$4,000	\$10,000	\$10,000

Factors to be considered should be:

- a. anticipated length of trial
- b. number of charges
- c. possible sentence imposed upon conviction
- d. complexity of case
- e. number of prosecutors
- f. specialized evidence to be called i.e. DNA
- g. whether client on a contributory certificate
- h. experience level of proposed counsel - two counsel with four to ten years experience would more likely be approved than two plus ten year counsel
- i. number of accused

The Committee approved this proposal unanimously.

ISSUES RELATED TO THE ENTIRE BAR

FINANCIAL CONTRIBUTIONS AND ELIGIBILITY FOR CLIENTS

11. Amend the Plan's Financial Eligibility Guidelines (See Page - 8 -of Legal Aid Consultation Report)

SAVINGS FISCAL YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
\$125,000	\$1,950,000	\$14,520,000

This initiative will include:

- a. The adaption of the financial eligibility guidelines to match newly introduced changes to welfare.
- b. The reduction of liquid asset deductions.
- c. The reduction of allowances for debt.
- d. An investigation as to whether the Plan should take fewer liens from clients.

The Committee approved this proposal unanimously.

12. A \$25 fee for applicants who are not in receipt of family benefits or welfare. (See Page - 9 - of Legal Aid Consultation Report)

REVENUE FISCAL YR. 1995/96	REVENUE FISCAL YR. 1996/97	ANNUALIZED REVENUE
\$1,275,000	\$2,099,000	\$2,200,000

It is anticipated that in 10% of the cases the fee would be waived and it is anticipated that this would happen most frequently with applicants who are in custody.

The Committee approved this proposal unanimously.

13. A \$25 fee in order to appeal an Area Director's decision to an Area Committee. This fee would not be paid by persons who are not in receipt of family benefits or welfare. (See Page - 9 - of Legal Aid Consultation Report)

REVENUE FISCAL YR. 1995/96	REVENUE FISCAL YR.	ANNUALIZED REVENUE
\$50,000	\$85,000	\$85,000

It is anticipated that in 10% of the cases the fee would be waived and it is anticipated that this would happen most frequently with applicants who are in custody.

The Committee approved this proposal unanimously.

ISSUES ADDRESSING STANDARDS IN PRACTICING AND BILLING BY LAWYERS

14. The Creation of Standards of Practice. (See Page - 10 - of Legal Aid Consultation Report)

SAVINGS FISCAL YR. 1995/96	SAVINGS FISCAL YR.	ANNUALIZED SAVINGS
\$300,000	\$1,000,000	\$1,000,000

It is anticipated that a joint effort by the Plan and the Professional Standards Committee of the Law Society may allow the Plan or the Law Society to establish standards which would have to be met by counsel both to get on to the legal aid panel and take on difficult cases. The result would be a better quality of service which would also produce greater efficiency and reduce costs.

The Committee approved this proposal by a vote of 6 in favour and 4 against.

15. The Creation of Hard Caps. (See Page - 10 - of Legal Aid Consultation Report)

Under this proposal, lawyers at the basic level would be capped at \$150,000 and lawyers at Tier 2 and Tier 3 levels would be capped at \$168,750 and \$187,500 respectively. As most counsel affected would begin transferring cases as they approached the cap, it is not anticipated that this measure will achieve significant savings. However, it can play an important role in levelling out amounts received by individual lawyers, including a small population of regularly high billers. The Provincial Director would exercise discretion so that counsel who may be close to the cap would be able to act on important cases that may take them over the cap. In order to ensure that the caps are not circumvented, no accounts would be accepted more than six months after the conclusion of the case.

SAVINGS FISCAL YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
none	none	none

The Committee approved this proposal unanimously.

16. The elimination of most payments for travel by counsel acting for legally aided clients. (See Page - 11 - of Legal Aid Consultation Report)

SAVINGS FISCAL YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
\$343,000	\$1,602,000	\$2,288,000

Measured by the usual Legal Aid test of what would a "client of modest means" do when choosing counsel, it is unlikely that the client will incur the additional expense of retaining out of town counsel.

This measure would apply to all areas of law, except appeals or to Board hearing in refugee cases. Counsel will be permitted to take trials or do legal work anywhere in the province, but will not be paid travel time, mileage or accommodation without the approval of the Area Director in the issuing area. No request for approval of travel time, mileage or accommodation could be made when the travel time, mileage or accommodation could be made where the travel distance is 75 km., or less one way.

Applications for approval of payment of travel time, mileage or accommodation will be made to the Area Director. There will be an appeal of the Area Director's decision to the Area Committee and a further appeal from the Area Committee to the Provincial Director.

No single factor would automatically result in approval of payment, but the following factors should be considered:

- lack of counsel to conduct the case in the jurisdiction of the trial;
- geographical limitations on the availability of counsel;
- lack of counsel with sufficient expertise to conduct the trial in the jurisdiction of the trial having regard to the nature of the case and the evidence to be presented;
- the unavailability of counsel in the jurisdiction of the trial having regard to the nature of the case and the evidence to be presented;

29th August, 1995

- e. anticipated length of the trial;
- f. whether the client is on a contributory certificate;
- g. whether there is a previous or existing solicitor client relationship.

The Committee approved this proposal unanimously.

ISSUES DEALING WITH FINANCIAL CONTRIBUTIONS FROM MEMBERS OF THE BAR.

- 17. Increasing the Legal Aid Levy paid by each member of the profession.
(See Page - 12 - of Legal Aid Consultation Report)

The existing levy of \$267 is applied towards the administrative costs of the Plan. This proposal would create a second levy which would be used to reduce the shortfall and pay lawyers accounts.

These options:

a.	\$100 Levy	REVENUE FISCAL YR. 1995/96	REVENUE FISCAL YR. 1995/96	ANNUALIZED REVENUE
		\$2,250,000	\$2,250,000	\$2,250,000
b.	\$250 Levy	REVENUE FISCAL YR. 1995/96	REVENUE FISCAL YR. 1996/97	ANNUALIZED REVENUE
		\$5,625,000	\$5,625,000	\$5,625,000
c.	\$500 Levy	REVENUE FISCAL YR. 1995/96	REVENUE FISCAL YR. 1996/97	ANNUALIZED REVENUE
		\$11,250,000	\$11,250,000	\$11,250,000

The Committee rejected this proposal unanimously.

- 18. Imposing a holdback on fees billed. (See Page - 14 - of Legal Aid Consultation Report)

This option would allow the Plan to increase the amount deducted from each account rendered with the hope that the money would be paid to the solicitor at some future date. Similar "holdback" schemes have been tried in Manitoba and New Brunswick. In Manitoba the money held back has never been paid to the solicitors, whereas in New Brunswick all of the money held back last year will be paid this year. Given the present uncertainty as to whether the government will honour the MOU beyond 1995/96, this measure may amount to a permanent holdback, as was the case in Manitoba.

- a. Holdback 10% of the fees owed on every account on certificates issued as of Aug. 1.

SAVINGS FISCAL YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
\$3,173,000	\$17,346,000	\$212,153,000

29th August, 1995

- b. Holdback 20 % of the fees owed on every account on certificates issued as of Aug. 1.

SAVINGS FISCAL YR. 1995/96	SAVINGS FISCAL YR. 1996/97	ANNUALIZED SAVINGS
\$6,346,000	\$34,692,000	\$42,307,000

This proposal was unanimously rejected by the Committee.

19. Extend the time lines for the payment of accounts beyond 150 days.
(See Page - 14 - of Legal Aid Consultation Report)

This proposal was unanimously rejected by the Committee.

The Committee recommends that the Law Society review its policies concerning deferral for payment of fees and levies, sets-offs and solicitors' bankruptcies in order to assist those who will be affected by the slowdown in the payment of accounts. It is also suggested that the Treasurer and/or her designate should meet with bank officials to help arrange for more liberal lines of credit for those affected.

20. Stop issuing immigration certificates until the federal government agrees to pay the costs.

This issue was raised frequently during the consultation sessions, and it was often one of the suggestions lawyers put forward in correspondence and hotline message to help the Plan save money. Many lawyers argued that funding this area of law as the federal government's responsibility and that the Plan should simply stop issuing certificates for immigration and refugee matters. The only caveat being if an individual has been a landed resident for a considerable period of time.

The Committee rejected this proposal unanimously.

Please see a report prepared by Ruth Lawson, Deputy Director Appeals regarding this issue which is attached hereto as SCHEDULE A.

21. Providing detailed information to lawyers on financial eligibility criteria and the financial disclosure of the client who has been granted a certificate.

Many lawyers questioned the obligation of the lawyer to report changes in their clients' financial circumstances. To make it easier for lawyers to perform this function for the Plan, it was suggested that first financial information should be forwarded to lawyers, and second, clients should be required to provide the data, e.g., annual tax returns and an outline of their assets and liabilities, so that lawyers would be able to assess any changes in financial circumstances. Often there was the feeling that many clients attempt to hide resources from the Plan.

The Committee approved this proposal unanimously.

The specified measures approved by the Committee yield the following totals:

29th August, 1995

SAVINGS/ REVENUE FISCAL YR. 1995/96	SAVINGS/ REVENUE FISCAL YR. 1996/97	ANNUALIZED SAVINGS/ REVENUE
\$8,632,000	\$26,514,000	\$46,105,000

The projected shortfall for March 31, 1996 is presently estimated to be \$70m. Though it causes great pain to the service providers the Committee recognized and accepted that the projected shortfall not managed by specific measures (\$61,368,000) will be temporarily managed by an extension of the payment guidelines by up to an additional 90 days.

Under the MOU in 1996/97 there will be \$26,514,000 from the specific measures approved by the Committee which the Committee anticipates using to reduce the extended payment guidelines thereby relieving the need to use delay in payment as a management tool.

OUTSTANDING ISSUE FOR THE LEGAL AID COMMITTEE

The Legal Aid Committee has raised on a number of occasions the need to make a decision regarding the payment of accounts which exceed the current 6 month rule. The Plan is aware of a number of accounts, representing significant dollars, which have still to be forwarded for payment. Many of these accounts are two, three, four and five years old.

Current regulations state that the Plan will not honour accounts where a six month period has elapsed since the file was closed. While this has been a regulation on the books for some time, it has never been enforced in the past. The question given the funding shortfall is do we honour these accounts now?

The Committee tabled discussion on this matter.

A NUMBER OF OTHER ISSUES HAVE BEEN RAISED THAT WILL BE FURTHER STUDIED ON AN URGENT BASIS BY THE COMMITTEE. THEY INCLUDE:

- proposal #1: That new procedures be developed for all family law applications.
- PROPOSAL #2: Whether the Plan should pay disbursements in divorce matters for clients who are in receipt of family benefits or general welfare.
- PROPOSAL #3: Whether the Plan should impose a daily cap (up to 10 hours)
- PROPOSAL #4: Whether there should be a further elimination of services in the areas of impaired driving and narcotics offenses.
- PROPOSAL #5: Whether the criminal tariff should be changed to an hourly rate.
- PROPOSAL #6: Whether there should be an examination of tariff rates for the Greater Toronto Area compared to the rest of the province.
- PROPOSAL #7: Whether lawyers should be allowed to accept fees in addition to the amount paid by the Plan.
- PROPOSAL #8: That legal aid assistance should be regarded as a loan rather than a grant.

29th August, 1995

PROPOSAL #9: Whether alleged Young Offenders whose parents are able to pay should be eligible for legal aid assistance.

PROPOSAL #10: Whether government disbursements should be waived in legal aid cases.

In addition the Committee will be continuing to study proposals for systemic change to achieve greater financial predictability for the Plan.

A.2 DISCIPLINE ISSUES

A.2.1 The Legal Aid Committee received a report on Discipline Issues prepared by Mary Eberts. It was agreed that the Chair of the Legal Aid Committee would meet with the Chair of the Discipline and Policy Committee of the Law Society with respect to the items raised in this report. The Legal Aid Committee also approved the four amendments to the Legal Aid Regulation which are recommended in this report, attached hereto and marked as SCHEDULE B.

A.3 DRAFT TARIFF

A.3.1 The Legal Aid Committee received a report prepared by George Biggar, Deputy Director, Legal entitled Draft Tariff. This report will be considered further by the Committee at its meeting in September and is attached hereto as SCHEDULE C.

B.
ADMINISTRATION

B.1 STATEMENTS OF INCOME AND EXPENDITURE FOR THE TWO MONTHS ENDED MAY 31, 1995 AND FOR THE FOUR MONTHS ENDED JULY 31, 1995

B.1.1 The Statements of Income and Expenditure for the two months ended May 31, 1995 and for the Four Months ended July 31, 1995 are attached hereto as Schedule D.

B.2 REPORTS ON THE PAYMENT OF SOLICITORS ACCOUNTS FOR THE MONTHS OF JUNE AND JULY, 1995

B.2.1 The reports on the Payment of Solicitors Accounts for the months of June and July, 1995 are attached hereto as Schedule E.

B.3 REPORTS ON THE STATUS OF REVIEWS IN THE LEGAL ACCOUNTS DEPARTMENT FOR THE MONTHS OF JUNE & JULY, 1995

B.3.1 The reports on the Status of Reviews in the Legal Accounts Department for the months of June and July, 1995 are attached hereto as Schedule F.

B.4 AREA COMMITTEES - APPOINTMENTS & RESIGNATIONS

APPOINTMENTS

ESSEX

Carolyn Gray, solicitor
Cheryl A. Hodgkin, solicitor
Rhona Samuels, youth anti-racism co-ordinator

HURON

Heather Ross, solicitor

29th August, 1995

NIAGARA SOUTH

Thomas Bielby, solicitor

PEEL

Ian Cowan, solicitor
Michael Day, solicitor
Peter Killaby, solicitor
Mark Skersky, solicitor

STORMONT, DUNDAS & GLENGARRY

Sandra Enns, company director
Thomas J. O'Brien, retired Exec. Director, CAS

WELLINGTON

Wilma Winnifred Schwint, retired office administrator

RESIGNATION

OTTAWA/CARLTON

Nancy Adams

ESSEX

Roger G. Rivait

NIAGARA SOUTH

Deya Benavides

STORMONT, DUNDAS & GLENGARRY

Bernard Shields
Ben Stidwill

DECEASED

SUDBURY/MANITOULIN

Robert Debassige

C.
INFORMATION

C.1 NOTICE TO PROFESSION

C.1.1 The Legal Aid Committee received a copy of a Notice to the Profession concerning the delay in the payment of accounts which has been included in the three cheque runs commencing August 21, 1995. This notice is attached hereto and marked as SCHEDULE G.

ALL OF WHICH is respectfully submitted

S. Goudge
Chair

August 29, 1995

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

- Item A.-20. - Copy of Memorandum from Ms. Ruth Lawson, Deputy Director, Appeals to the Legal Aid Committee dated August 22, 1995 re: Legal Aid Services to Refugee Claimants in Ontario.
(Schedule A)
- Item A.-A.2 - Copy of Memorandum from Ms. Mary Eberts to The Legal Aid Committee dated August 17, 1995 re: Discipline Issues.
(Schedule B)
- Item A.-A.3 - Copy of Draft Tariff dated July 7, 1995.
(Schedule C)
- Item B.-B.1.1 - Statements of Income and Expenditure for the two months ended May 31, 1995 and for the Four Months ended July 31, 1995.
(Schedule D)
- Item B.-B.2.1 - Reports on the Payment of Solicitors Accounts for the months of June and July, 1995.
(Schedule E)
- Item B.-B.3.1 - Reports on the Status of Reviews in the Legal Accounts Department for the months of June and July, 1995.
(Schedule F)
- Item C.-C.1.1 - Copy of a Notice to the Profession re: Future Delays in the Payment of Legal Aid Accounts.
(Schedule G)

The Legal Aid Consultation Report was circulated to the Benchers and a copy can be found in the Convocation file.

It was moved by Mr. Goudge, seconded by Ms. Curtis that the Items under Administration (B.) and Information (C.) be adopted.

Carried

Convocation took at brief recess at 10:45 a.m. and resumed at 11:00 a.m.

The following recommendations were debated and voted on as follows:

Item A.-5. - Elimination of payment for pre-trial meetings with Crown Attorneys

It was moved by Mr. Goudge, seconded by Ms. Curtis that payment for pre-trial meetings with Crown Attorneys be eliminated and that the government be requested to require that pre-trials with Crown Attorneys be available by telephone.

Carried

ROLL-CALL VOTE

Aaron	Against
Adams	For
Armstrong	For
Backhouse	Against
Bellamy	Abstain
Banack	Against
Bobesich	Against
Carey	Against
Carpenter-Gunn	Against
Cole	For
Copeland	Against
Cronk	For
Crowe	For
Curtis	For
Eberts	For
Epstein	For
Feinstein	For
Finkelstein	Against
Gottlieb	Against
Goudge	For
Harvey	Against
Lax	For
Legge	For
MacKenzie	Against
Marrocco	Against
Millar	For
Murphy	For
Murray	For
S. O'Connor	Against
Puccini	For
Richardson	For
Ross	For
Ruby	Against
Sachs	Against
Scott	For
Sealy	For
Stomp	For
Strosberg	For
Swaye	For
Thom	For
Topp	Against
Wilson	Abstain
Wright	Against

Item A.-8. - Payment for one service per half day

It was moved by Mr. Goudge, seconded by Ms. Curtis that an amendment to the Criminal Tariff provide that lawyers not be paid for doing more than one service in one half day.

Not Put

It was moved by Mr. Topp, seconded by Mr. Ruby that Recommendation #8. be sent back to the Legal Aid Committee for further study and consideration in the context of the other proposal that the criminal tariff be changed to an hourly rate tariff and that the Committee report back in September with their recommendations.

Carried

RUBY/TOPP NOTICE OF MOTION

It is proposed that, on grounds of equity and fairness, payments for criminal work under the Legal Aid Act be made on a fee for time basis and that the present block fee structure be replaced as soon as possible.

Withdrawn

Item A.-12. - Application Fee

It was moved by Mr. Goudge, seconded by Ms. Curtis that applicants who are not in receipt of family benefits or welfare be charged a \$25 fee for a legal aid certificate.

Carried

Item A.-14. - Creation of Standards of Practice

It was moved by Mr. Goudge, seconded by Ms. Curtis that standards of practice be established which would have to be met by counsel both to get on to the legal aid panel and to take on difficult cases.

Carried

Item A.-15. - Creation of Hard Caps

It was moved by Mr. Goudge, seconded by Ms. Curtis that hard caps be created with lawyers at the basic level being capped at \$150,000 and lawyers at Tier 2 and Tier 3 levels capped at \$168,750 and \$187,500 respectively.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	Against
Armstrong	For
Backhouse	For
Bellamy	Abstain
Banack	For
Bobesich	Abstain
Carey	For
Carpenter-Gunn	For
Cole	For
Copeland	For
Cronk	For
Crowe	For

Curtis	For
Eberts	For
Epstein	For
Feinstein	For
Finkelstein	For
Gottlieb	For
Goudge	For
Harvey	For
Lax	For
Legge	For
MacKenzie	For
Marrocco	For
Millar	For
Murphy	For
Murray	For
S. O'Connor	For
Puccini	Against
Richardson	For
Ross	For
Ruby	For
Sachs	For
Scott	For
Sealy	For
Stomp	Against
Strosberg	For
Swaye	For
Thom	For
Topp	For
Wilson	For
Wright	For

It was moved by Mr. Wilson but failed for want of a seconder that there be a sliding scale of fees which could be awarded after the hard cap is reached and that the matter be referred back to the Committee for further consideration.

Item A.-16. - Elimination of most payments for travel by counsel

It was moved by Mr. Goudge, seconded by Ms. Curtis that no claims for travel expenses be made where the travel distance was 75 km. or less one way.

It was moved by Mr. Carey, seconded by Mr. Murphy and accepted by the Chair that Item #16. be amended by changing the travel distance from 75 km. to 50 km. outside the greater Toronto area so that the motion would then read:-

That no claims for travel expenses be made where the travel distance is 50 km. or less one way outside the greater Toronto area.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	For
Armstrong	For
Backhouse	For
Bellamy	Abstain
Banack	For
Bobesich	For
Carey	For
Carpenter-Gunn	For
Cole	For
Copeland	Against
Cronk	For
Crowe	For
Curtis	Against
Eberts	For
Epstein	Against
Feinstein	For
Finkelstein	For
Gottlieb	For
Goudge	Against
Harvey	For
Lax	Against
Legge	For
MacKenzie	For
Marrocco	For
Millar	Against
Murphy .	For
Murray	For
S. O'Connor	For
Puccini	For
Richardson	For
Ross	For
Ruby	Against
Sachs	For
Scott	Against
Sealy	For
Stomp	For
Strosberg	For
Swaye	For
Thom	Against
Topp	For
Wilson	Against
Wright	For

It was moved by Ms. O'Connor seconded by Mr. Swaye that northwestern Ontario be exempt from the elimination of travel expenses.

Lost

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:15 P.M.

CONVOCATION RECONVENED AT 2:30 P.M.

PRESENT:

The Treasurer, Aaron, Adams, Armstrong, Backhouse, Banack, Bellamy, Bobesich, Carey, Carpenter-Gunn, R. Carter, Cass, Cole, Copeland, Cronk, Crowe, Curtis, Eberts, Epstein, Feinstein, Finkelstein, Gottlieb, Goudge, Harvey, Lamont, Lawrence, Lax, Legge, MacKenzie, Marrocco, Millar, Murphy, Murray, S. O'Connor, Pepper, Puccini, Richardson, Ross, Ruby, Sachs, D. Scott, I. Scott, Sealy, Stomp, Strosberg, Swaye, Thom, Topp, Wardlaw, Wilson and Wright.

.....

.....

IN PUBLIC

.....

Convocation gave a standing ovation to Mr. Ian Scott, Q.C. who attended Convocation today.

LEGAL AID REPORT (cont'd)

Mr. Murphy rose on a Point of Personal Privilege with regard to the position of the Criminal Lawyers Association on the travel allowance.

It was moved by Mr. Goudge, seconded by Ms. Curtis that Items. A.-1., 2., 3., 4., 6., 9., 10., 11., 13. and 21. be adopted.

Carried

THE REPORT AS AMENDED WAS ADOPTED

MOTIONS - RE: LEGAL AID

It was moved by Mr. Carey, seconded by Mr. Marrocco that the Law Society forthwith accept as its payment of its fees the assignment of legal aid accounts from its members and to recommend to LPIC that it do likewise.

Not Put

It was moved by Mr. Epstein, seconded by Mr. Aaron that the Carey/Marrocco motion be tabled.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	For
Armstrong	Against
Backhouse	For
Bellamy	Abstain
Banack	For
Bobesich	Against
Carey	Against
Carpenter-Gunn	For
Cole	For
Copeland	For
Cronk	For

Crowe	For
Curtis	For
Eberts	For
Epstein	For
Feinstein	For
Finkelstein	For
Gottlieb	For
Goudge	For
Harvey	For
Lax	For
Legge	For
MacKenzie	For
Marrocco	Against
Millar	For
Murphy	Against
Murray	For
S. O'Connor	For
Puccini	For
Richardson	For
Ross	For
Ruby	Against
Sachs	For
Scott	For
Sealy	For
Stomp	For
Strosberg	For
Swaye	For
Thom	For
Topp	Against
Wilson	For
Wright	For

A debate followed on the motions put by Messrs. Topp and Scott.

Mr. Ruby addressed his motion and amended it by adding the words "by the government" following the word "pay" in paragraph 1. The motion then read:

THAT: -

1. That effective September 1, 1995 at 1:00 a.m. the Provincial Director of the Ontario Legal Aid Plan be instructed to forthwith cease issuing Legal Aid Certificates until satisfied that the promise to pay by the government, implicit in each certificate, will be fulfilled in a timely fashion.
2. That the Law Society begin the process of taking the necessary steps to ensure the government fulfils its obligation to the people of Ontario and the legal profession including but not limited to ensuring full payment of legal aid accounts in a timely fashion.

MOVED BY: Robert Topp

SECONDED BY: Clayton Ruby

It was moved by Mr. Goudge, seconded by Ms. Curtis that the Topp/Ruby motion be deferred to the September Convocation.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	For
Armstrong	For
Backhouse	For
Banack	For
Bobesich	For
Carey	Against
Carpenter-Gunn	For
Cole	For
Copeland	For
Cronk	For
Crowe	For
Curtis	For
Eberts	For
Epstein	For
Feinstein	For
Gottlieb	Against
Goudge	For
Harvey	For
Lax	For
Legge	For
MacKenzie	For
Marrocco	For
Millar	For
Murphy	For
Murray	For
Puccini	For
Richardson	For
Ross	For
Ruby	Against
Sachs	Against
Scott	For
Sealy	For
Stomp	For
Strosberg	For
Swaye	For
Thom	For
Topp	Against
Wilson	For
Wright	For

Convocation took a brief recess at 4:00 p.m. and resumed at 4:15 p.m.

Mr. Scott presented his motion and made the following amendments:

- (1) insert the following words before the paragraph beginning with the word "Convocation": "In order to enable the Legal Aid Plan to proceed in a business-like fashion in its administration,"; and
- (2) insert the words "Legal Aid Act and the" before the word "Memorandum" in paragraph 1).

29th August, 1995

The motion then read:

RESOLVED that Convocation declare that

- 1) It is the obligation of The Law Society of Upper Canada and the Ontario Government to abide by the Memorandum of Understanding of September 1994 which assures access to justice for legally aided clients in Ontario.
- 2) With the management steps approved by Convocation, the Memorandum of Understanding provides a fully workable and financially responsible framework for the future delivery of legal services to the financially disadvantaged people of Ontario.
- 3) It is unacceptable to ask the public and the profession to accept the evisceration of the legal aid budget as proposed by the Ontario Government.

In order to enable the Legal Aid Plan to proceed in a business-like fashion in its administration, Convocation therefore calls upon the Ontario Government, to within the next 30 days,

- 1) reconfirm its commitment to the Legal Aid Act and the Memorandum of Understanding.
- 2) advise, if the Ontario Government plans to default on its obligation and massively withdraw funding, how it proposes to provide the fundamental right of access to justice for financially disadvantaged people
- and 3) advise how, in such circumstances, it proposes to discharge its obligation to pay lawyers for professional work done for legal aid clients.

MOVED BY: David Scott

SECONDED BY: Stephen Goudge
Bob Armstrong

Carried

CONVOCATION ROSE AT 4:40 P.M.

Confirmed in Convocation this 29 day of September, 1995


Treasurer