

MINUTES OF CONVOCATION

Friday 22nd June, 1990  
9:30 a.m.

PRESENT:

The Treasurer (Mr. Lee K. Ferrier), Mr. Bastedo, Ms. Bellamy, Ms. Callwood, Messrs. Carey, Carter and Cass, Ms. Chapnik, Messrs. Epstein, Farquharson, Ferguson and Furlong, Mrs. Graham, Messrs. Ground and Guthrie, Ms. Harvey, Messrs. Hickey, Howie and Kemp-Welch, Ms. Kiteley, Messrs. Lamek, Lamont and Lawrence, Mrs. Legge, Messrs. Lerner, Levy, Lyons, McKinnon, Murphy, Noble and O'Connor, Ms. Peters, Messrs. Rock, Ruby, Scace, Shaffer, Somerville, Spence, Strosberg, Thom, Thoman, Topp and Wardlaw, Mrs. Weaver and Mr. Yachetti.

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"IN PUBLIC"

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ELECTION OF TREASURER

The first item of business was the election of the Treasurer. The candidates were Mr. Patrick Furlong, Mr. Bruce Noble, Ms. Patricia Peters and Mr. James Spence.

The Secretary indicated that the following Benchers had cast votes at the advanced poll on meeting day and were not eligible to cast another vote until the second ballot:

Ms. Bellamy, Messrs. Epstein, Farquharson, Furlong, Ground, Hickey and Lamont, Mrs. Legge, Messrs. McKinnon, McMurtry, Noble, O'Brien, Pope, Rock, Shaffer and Spence, Ms. Stewart and Mr. Thoman.

The Treasurer appointed Mr. R. Cass, a life Bencher as his scrutineer.

After the casting of the ballots the Secretary and Mr. Cass withdrew to count the votes.

The results of the first ballot were:

Total number of votes cast 48.

- Mr. Spence - 24 votes
- Mr. Furlong - 15 votes
- Ms. Peters - 5 votes
- Mr. Noble - 4 votes

Pursuant to the Rules a second ballot was then cast with Mr. Noble being dropped from the ballot.

On the second ballot Mr. Manes and Mr. Bragagnolo entered Convocation and voted. Those who had cast ballots in the advanced poll and were not present in Convocation to vote in the second ballot were:

Messrs. McMurtry, O'Brien and Pope.

The results of the second ballot were:

Total number of votes cast 46.

Mr. Spence - 26 votes

Mr. Furlong - 19

Ms. Peters - 1

The Secretary announced that Mr. Spence had been elected Treasurer for the coming year.

It was moved by Mr. Furlong, that the election be unanimous.

Carried

Mr. Spence then took the Chair and made the following remarks:

"I have a few remarks to make about how I see things for us, but before I get on to those remarks I wish to speak on your behalf of our retiring Treasurer, Lee Ferrier. A number of our fellow Benchers spoke last night of Lee's great service to us and I will not repeat all that they had to say. Lee, you know very well - indeed, you know better than the rest of us - that over the past year or so we have gone through the most profoundly troubling and testing times. Despite the turbulence, we have not lost our sense of direction; that we owe in large part to you. You have quietly, patiently and firmly steered our course and your dedication is known to us all. We owe you a debt of gratitude and we will not forget it. We look forward to your continuing participation in the affairs of the Law Society.

Before we return to our agenda, I would like to say a few words. First I am grateful to all of you for the way we have carried out this election. Throughout, the tone and approach I have encountered on all sides has been one of courtesy and mutual respect. For this, I would extend my thanks to all and in particular to the other candidates, who have always taken the high road during this affair. Many election processes in our times fall far short of the example you have set. I would add that I recognize that all Benchers, whatever their position in this election, were seeking the best interests of the Law Society. I assure you I respect those views and I will be sensitive to your concerns.

You have also given me much free advice, which I have welcomed and considered and sometimes followed. Specifically, I am thankful for the following suggestions.

- (1) that I should try to alter my appearance, which I was told is "too status quo";
- (2) on the other hand, that on no account should I distribute the bumper stickers that read "Honk if you're voting for Jimmy";
- (3) that, if I was elected, I would need psychiatric or pastoral care, and
- (4) whether or not I got such care, I would find this job is disturbingly similar to herding cats.

We have lots of urgent business to attend to today, so this is a time for just a few comments on the tasks ahead of us. I have sat in this room long enough to know that we govern ourselves collegially, and not through any command structure. However, many of you have warned me that you will not be content if I sit on the sidelines as a referee. I promise to be involved in the action. As for our responsibilities, I think our first priority must be to settle and put in place the new procedures we have been developing for complaints, competence and discipline. It is worth recalling that this Convocation initiated work in these matters well before we learned that the Attorney-General also

considered these to be of the utmost importance. I hope we will also move forward on other reforms which will make the Law Society more efficient, accessible and accountable. Work in these areas is underway in our committees; I will be encouraging these efforts. In making these remarks, I believe I am reflecting your views. We are all committed to the duties we as Benchers owe to the profession and public. I am confident we will move to bring about significant improvements in our affairs. And I hope our efforts will be blessed with good luck."

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Convocation adjourned and reconvened at 10.35 p.m. with those listed above being present.

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ADMISSIONS COMMITTEE

Ms. Peters presented the Report of the Admissions Committee of its meeting on June 14th, 1990 as it concerned the call to the Bar.

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 14th of June, 1990 at 9:30 a.m., the following members being present: Mrs. Weaver (Vice-Chair) and Messrs. Ground, Lamont and Strosberg.

B.  
ADMINISTRATION

3. CALL TO THE BAR AND CERTIFICATE OF FITNESS

Bar Admission Course

The following candidates, having successfully completed the thirty-first Bar Admission Course, filed the necessary documents and paid the required fee of \$210.00 now apply for call to the Bar and to be granted Certificates of Fitness:

- Dabi Dial
- Gail Nadine Erlichman
- Bayla Rachel Martin
- Anne Mary Elizabeth Spafford

Approved

Transfer from another province - Regulation 4(2)

The following candidate, having successfully passed the Bar Admission Course Transfer Examinations, filed the necessary documents and paid the required fee, now applies for call to the Bar and to be granted a Certificate of Fitness:

- Steven Mark Kmec
- Province of Quebec

Approved

Full-Time Members of Faculties of Approved Law Schools

The following candidate, having filed the necessary documents and complied with the requirements of the Society in his particular case, is now entitled to be called to the Bar of Ontario and to be granted a Certificate of Fitness:

Professor Ronald Joel Daniels

Faculty of Law,  
The University of  
Toronto

Fee: \$200.00

Approved

ALL OF WHICH is respectfully submitted

DATED this 22nd day of June, 1990

"A. Rock"  
Chair

ADMISSIONS COMMITTEE - ADDENDUM - JUNE 22ND 1990

4. CALL TO THE BAR AND CERTIFICATE OF FITNESS

Bar Admission Course

The following candidates, having successfully completed the thirty-first Bar Admission Course, filed the necessary documents and paid the required fee of \$210.00 now apply for call to the Bar and to be granted Certificates of Fitness:

- Keith Nigel Batten
- Harmanna Christina Donszelmann
- John William Ernest Gilbert
- William Ross Gilmour
- Thomas Michel Hicks
- Yim Shik Daniel Lai
- Louisa Yuen Piing Lau
- Glenn Edward Joseph Sandberg

Approved

Transfer from another province - Regulation 4(1)

The following candidate, having successfully passed the Bar Admission Course Transfer Examinations, filed the necessary documents and paid the required fee, now applies for call to the Bar and to be granted a Certificate of Fitness:

Bryan Daniel Anthony Manulak

Province of British Columbia

Approved

THE REPORT AND ADDENDUM WERE ADOPTED

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CALL TO THE BAR

The candidates as listed were presented to the Treasurer and Convocation and were called to the Bar, and the degree of Barrister-at-Law was conferred upon each of them by the Treasurer.

|                                |                                     |
|--------------------------------|-------------------------------------|
| Keith Nigel Batten             | 31st Bar Admission Course           |
| Dabi Dial                      | 31st Bar Admission Course           |
| Harmanna Christina Donszelmann | 31st Bar Admission Course           |
| Gail Nadine Erlichman          | 31st Bar Admission Course           |
| John William Ernest Gilbert    | 31st Bar Admission Course           |
| William Ross Gilmour           | 31st Bar Admission Course           |
| Thomas Michel Hicks            | 31st Bar Admission Course           |
| Yim Shik Daniel Lai            | 31st Bar Admission Course           |
| Louisa Yuen Ping Lau           | 31st Bar Admission Course           |
| Bayla Rachel Martin            | 31st Bar Admission Course           |
| Glenn Edward Joseph Sandberg   | 31st Bar Admission Course           |
| Steven Mark Kmec               | Transfer, Quebec                    |
| Bryan Daniel Anthony Manulak   | Transfer, British Columbia          |
| Ronald Joel Daniels            | Professor, University of<br>Toronto |

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LEGAL EDUCATION COMMITTEE

Mr. Rock presented the Report of the Legal Education Committee of its meeting on June 14th, 1990.

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 14th of June, 1990. The following members were present: A. Rock (Chair), D.H.L. Lamont (Vice-chair), T. Bastedo, D. Bellamy, S. Chapnik, P. Epstein, R. Kemp-Welch, L. Legge, J. Spence, S. Thom, R. Yachetti.

A.  

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POLICY

1. BAR ADMISSION COURSE: APPEAL PROCEDURES

The procedures governing appeals from failures in the Bar Admission Course have proven to be inadequate.

On May 22, 1990, a meeting was held of members of the Legal Education Committee, Heads of Section, and Senior Instructors. Appeal procedures were discussed briefly, and it was determined that the matter would be canvassed by the Bar Admission Reform Subcommittee joined by representatives of the Heads of Section.

At a meeting of June 12, 1990, the Bar Admission Reform Subcommittee and representatives of the Heads of Section proposed new procedures. (pages 1 - 7)

It is recommended that the new procedures be approved.

Approved

2. BAR ADMISSION COURSE: PROFESSIONAL RESPONSIBILITY AND PRACTICE MANAGEMENT COMPONENT

In the 31st Bar Admission Course, the Professional Responsibility component, then referred to as "Profession of Law", was examined by including one question on each of the eight regular Bar Admission Course examinations. A Pass was achieved by obtaining a Pass for six of the eight questions. The Practice Management component, then known as "Business of the Practice of Law", was scheduled for two days. There was no examination. Attendance was mandatory.

In the 32nd Bar Admission Course teaching term, scheduled to run from September 17, 1990 to January 30, 1991, a two day Professional Responsibility component and a one day Practice Management component will be offered. In addition, Professional Responsibility and Practice Management will form parts of the other scheduled courses.

It is recommended that Professional Responsibility and Practice Management be examined throughout the teaching term by including a single related question on each of the eight regular examinations. A Pass in the Professional Responsibility and Practice Management components would be obtained if a student obtains a Pass in six out of eight of the questions dealing with the Professional Responsibility and Practice Management component.

Approved

B.  

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ADMINISTRATION

1. ADVOCATES SOCIETY INSTITUTE

The Law Society is entitled to representation on the Board of the Advocates Society Institute. By reason of the appointment of Helen King-MacLeod to the Bench of the District Court, the resignation of Roger Yachetti, and the expiry of the term of Rino Bragagnolo, there are three positions on the Board to be filled by representatives of the Law Society.

It is recommended that the vacancies be filled by the following: Rino Bragagnolo, Colin Campbell, and Brenda Duncan.

Approved

C.  

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INFORMATION

1. BAR ADMISSION COURSE HEADS OF SECTION MEETING

On May 22, 1990, representatives of the Bar Admission Course Heads of Section and Senior Instructors met with representatives of the Legal Education Committee and the Director.

At the meeting, the following topics were considered:

- a) Standards for assessing Bar Admission Course students;
- b) Procedure for student appeals of examination failure.

At the meeting it was decided that special meetings would be held and that recommendations would be reported to the Legal Education Committee. The meeting would include the Bar Admission Reform Subcommittee and representatives of the Heads of Section and Senior Instructors.

The following people have volunteered to meet with the Bar Admission Reform Subcommittee: Steven Clark (Business Law), Jeffrey Cowan (Public Law), Elena Hoffstein (Estate Planning and Administration), Michael Watson (Assistant Section Head, Civil Litigation), Loretta Merritt (Bar Admission Advisory Committee), and Janne Burton (Bar Admission Advisory Committee).

The first meeting was on June 12, 1990.

2. ARTICLING REFORM SUBCOMMITTEE

The Articling Reform Subcommittee met on June 13, 1990 to consider comments and suggestions from the practising Bar, the Bar Admission Advisory Committee, and the Canadian Bar Association-Ontario.

The Subcommittee is revising its Draft Report for presentation to the Legal Education Committee for discussion and approval.

3. WOMEN IN THE LEGAL PROFESSION SUBCOMMITTEE

The Women in the Legal Profession Subcommittee, chaired by Fran Kiteley, met on May 4, 1990.

The Subcommittee discussed whether the Ontario law schools, including their students, would be interested in becoming involved in the work of the Women in the Legal Profession Subcommittee, in light of the increasing focus on women's concerns in the law schools.

The Subcommittee suggested that when Benchers make visits to the law schools they discuss the work of the Subcommittee, and solicit the involvement of law school students and faculty. (The Bencher visits were approved by the Legal Education Committee and Convocation at their regular April, 1990 meetings.)

4. COMPUTER EDUCATION FACILITY  
Monthly Report on Activities: May 1990

The Report is attached. (page 8)

5. OTTAWA YEAR END REPORT

The Report is attached. (pages 9 - 10)

6. CONTINUING LEGAL EDUCATION: REPORT ON COURSES  
Video Replay Programs

The programs of Real Estate For Support Staff, Personal Property Security Act, and Pensions were presented to the profession in the form of video replay in Windsor, Sault Ste. Marie, and Bracebridge respectively.

Live Programs - Toronto

Profit Centre or Overhead:

This one day program was held at the Old Mill in Toronto on May 15, 1990 for sixty registrants. The program dealt with the issue of law clerks and their effective utilization in law firms. The program evaluations generally showed the program to be very good or excellent. Registrants particularly noted the fact that the program topics were practical and were a good canvass of problems and developments in the field.

DEAL BREAKING TITLE PROBLEMS

This program was held at the Ontario Institute for Studies in Education for 286 registrants. Eighty-five percent of those responding to our evaluations indicated that the program was very good or good. Individual registrants found that the program was of practical assistance and offered a good overview of pertinent information even though it was deemed to be a basic refresher course. The program was chaired by James Hilton. He was assisted in the planning and organizing of the materials by Miriam Kelly and Katherine Christie.

THIRD ANNUAL REAL ESTATE RETREAT

This three day conference was held at the Queens Landing Inn in Niagara-on-the-Lake commencing with the evening presentation on Friday, May 25, and continuing through to Sunday, May 27 for seventy-three registrants. The program was co-chaired by Brian Bucknall and Brad McLellan. Robin-Lee Norris and Victoria Stuart assisted with the planning of the program. Thirty five percent of the registrants responded to our evaluation form and of those all of them found the program to be either very good or excellent. Some went as far as to say that of the three retreats this was the best. There was a mix of technical and practical issues as well as discussions of theoretical and philosophical issues.

The Friday night panel discussion on demographics, economics, ecological issues, and the residential market place was entertaining, informative and provocative. Saturday presentations dealt more with the practical side of conveyancing and related problems as well as some new approaches to residential housing. Sunday morning's presentation was devoted almost exclusively to affordable housing as well as a pot pourri of current topics. Registrations for the retreat have been declining at the rate of about 15 percent per year since the program was initiated three years ago.

FINANCE SERIES-UNDERSTANDING FINANCIAL STATEMENTS

Peter Chant, an accountant with Deloitte Touche, presented this program at the Corporate Centre in Toronto for 21 registrants on May 25, and 36 registrants on May 28, 1990. The nature of the program is such that it has to be restricted in number of registrants. Evaluations received indicated that the registrants found that Mr. Chant was very knowledgeable and informative in his presentation and was a good teacher in that he was able to impart his knowledge to the registrants. There are two more courses to be presented before the end of this fiscal year in this finance series.

7. CONTINUING LEGAL EDUCATION REFORM SUBCOMMITTEE

The Subcommittee has met twice since the date of the last report on May 7, 1990. A future subcommittee meeting is scheduled for Monday, June 25, 1990. It is anticipated that we will have an interim report for the Legal Education Committee meeting in September 1990.

The Committee has been focusing its attention on the issue of core programming, specifically in the area of Real Estate Law. The Committee is also looking at the CLE mandate in terms of core curricula. Future agenda topics include methods for transmission of programming, identifying the audience for CLE, and looking at the relationship of CLE to the Law Society's Specialization and Professional Standards programs.

ALL OF WHICH is respectfully submitted

DATED this 14th day of June, 1990

"A. Rock"  
Chair

Attached to the original Report in Convocation File, copy of:

- A-Item 1 - Proposed new Appeal procedures entitled 32nd Bar Admission Course Examination and Grading Rules. (Numbered 1 to 7)
- C-Item 4 - Computer Education Facility - Monthly Report on Activities: May 1990. (Number 8)
- C-Item 5 - Ottawa Year End Report. (Numbered 9 to 10)

THE REPORT WAS ADOPTED

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FINANCE COMMITTEE

Mr. Ground presented the Report of the Finance Committee of its meeting on June 14th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The FINANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of June, 1990 at three o'clock in the afternoon, the following members being present: Messrs. Ground (Chair), Furlong, Lamont, Lerner, Noble, Topp, Wardlaw and Mrs. Weaver.

B.  
ADMINISTRATION

1. FINANCIAL REPORT

The Director presented the highlights memorandum for the three Law Society Funds together with supporting financial statements for the eleven months ended May 31st 1990.

Approved

2. GOODS AND SERVICES TAX - EFFECT ON STUDENT TUITIONS

A memorandum from the Director of Finance concerning the Society's position with respect to Goods and Services Tax (G.S.T.) and its implications on student tuitions was before the Committee.

The Committee recommends that a ruling be sought from Revenue Canada, Customs and Excise as to the effect of the transitional rules of the G.S.T. legislation on the fees for the upcoming fall teaching term of the Bar Admission Course. The Committee further recommends that a letter be sent to the students explaining the position of the Law Society with respect to its election to be a "taxable" organization under G.S.T., the impact of G.S.T. on tuition fees, and advising them that any tuition fees paid prior to September 1990 will not be taxable. Any tuition fees paid subsequent to August 31st will be taxable on a pro rata basis up to 3.5%.

3. CANADA DEPOSIT INSURANCE - IDENTIFICATION OF CLIENTS WITH FUNDS IN MIXED TRUST ACCOUNTS

Material from the Law Society of Alberta together with correspondence between the Under Treasurer and two members of the Society on the above topic were before the Committee.

The Under Treasurer outlined the history of the issue and indicated that the C.D.I.C. was to respond to our requests for clarification as to the requirements of identification of funds in Mixed Trust Accounts. We are assured that the present system of identification by number is adequate and that no notice need be sent to the profession on this matter at this time.

The Under Treasurer will contact C.D.I.C. and inform Convocation on June 22nd 1990.

4. ONTARIO LEGAL AID PLAN - LAW SOCIETY 1989/90 CONTRIBUTION

The Deputy Director, Finance of the Ontario Legal Plan has requested the final balance of \$142,770.00 outstanding on the assessable administrative expenses in accordance with section 91(a) of the Regulations of the Legal Aid Act.

The Committee was asked to approve payment of this amount.

Approved

5. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 32 members who have not complied with the requirements respecting annual filing and who have not paid the late filing fee.

In all 32 cases all or part of the late filing fee has been outstanding four months or more. The 32 members owe \$16,415.00 of which \$2,890.00 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 32 members be suspended on June 22nd 1990 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 151.

6. SUSPENSION OF MEMBERS - ANNUAL FEES

There are 7 members who were granted deferral for previous years fees and to date have not paid those fees.

The Committee was asked to recommend that the rights and privileges of these members be suspended on June 29th 1990 if the total Annual Fees due remain unpaid by that date.

Approved

Note: Motion, see page 151.

7. RESIGNATION - REGULATION 12

Ronald Hillier Stainton of Niagara-on-the-Lake has applied for permission to resign his membership in the Society and has submitted a Declaration in support. Mr. Stainton requested that he be relieved of publication in the Ontario Reports.

His Declaration is in order and the Committee was asked to approve it.

Approved

8. LIFE MEMBERS

Pursuant to Rule 49, the following are eligible to become Life Members of the Society with an effective date of 20th of June, 1990:

|  |               |
|--|---------------|
| Robert Alfred Best                     | Toronto       |
| William Desmond Gordon Burke-Robertson | Ottawa        |
| Robert Smith Durdan                    | Niagara Falls |
| Alfred Meadows Ecclestone              | Toronto       |
| Joseph Arthur Enstone                  | Ottawa        |
| William Howell Green                   | Parry Sound   |
| Kenneth Watt Kernaghan                 | Toronto       |
| Robert Arnold Kingston                 | Toronto       |
| Zebulun Geoffrey Compton Lash          | Toronto       |
| Alexander Martin MacNaughton           | Toronto       |
| Charles Lachlan McKinnon               | Guelph        |
| John Harty Osler                       | Toronto       |
| Donald Milner Treadgold                | Toronto       |

Approved

C.  
INFORMATION

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1. ROLLS AND RECORDS

(a) Deaths

The following members have died:

|  |  |
|--|--|
| Max William Kellermann<br>Toronto (Life Member)  | Called June 16th 1932<br>Died October 26th 1989      |
| John Frederick Clarke<br>Weston (Life Member)    | Called June 15th 1933<br>Died January 1st 1990       |
| D'Arcy Roosevelt Lee<br>Dundas (Life Member)     | Called January 17th 1929<br>Died January 15th 1990   |
| George Argo McGillivray<br>Toronto (Life Member) | Called September 18th 1930<br>Died January 17th 1990 |
| Angus Charles Dunbar<br>Guelph (Life Member)     | Called September 13th 1923<br>Died April 17th 1990   |
| William Middleton Prest<br>Goderich              | Called September 28th 1950<br>Died April 23rd 1990   |
| Donald Percy Guthrie<br>Toronto (Life Member)    | Called September 17th 1925<br>Died April 25th 1990   |
| Clarey Bruce Sproule<br>Ottawa                   | Called June 29th 1950<br>Died May 12th 1990          |
| Edgar Seton Thorne<br>White Rock, (Life Member)  | Called June 15th 1939<br>Died May 14th 1990          |
| Alfred Edward Owen<br>Orillia                    | Called April 9th 1976<br>Died May 16th 1990          |
| John Thomas Murray Mills<br>Toronto              | Called June 29th 1949<br>Died May 21st 1990          |

Noted



3. LEGAL MEETINGS AND ENTERTAINMENT

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

- June 18, 1990                      Ontario Legal Aid Plan  
   Barristers' Lounge
- June 29, 1990                      Supreme Court of Ontario  
   Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 22nd day of June 1990

"J. Ground"  
Chair

Attached to the original Report in Convocation File, copy of:

- B-Item 1 - Memorandum from Mr. David Crack to the Chair and Members of Finance Committee dated June 7, 1990 re: Financial Statements - Highlights as at May 31st, 1990. ("B", pages 1 to 4)
- B-Item 2 - Memorandum from Mr. David E. Crack to the Chair and Members of Finance Committee dated June 6, 1990 re: Goods and Services Tax - B.A.C. Tuition Fees. (Page 5)
- B-Item 3 - Letter with enclosures from Mr. Craig Garrett, Product Support Officer (Canada Trust) dated May 30, 1990 to Ms. Kathleen Levesque (Canada Deposit Insurance Corporation). (Pages 6 to 8)

THE REPORT WAS ADOPTED

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MOTIONS

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

It was moved by Mr. Ground, seconded by Mr. Lamek 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 the 22nd of June 1990 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.

(List of Names in Convocation File)

MOTION TO SUSPEND: FAILURE TO PAY ANNUAL FEE

It was moved by Mr. Ground, seconded by Mr. Lamek THAT the rights and privileges of each member who has not paid all of their annual fees for which they had been granted deferral and whose name appears below be suspended for a period of one year from 29th day of June 1990 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.

- Max Berger                      Toronto
- Stephen Brooke                Toronto
- Domenico Buttazzoni        London
- Linda Finnigan                England
- Marshall M. Krys              Toronto

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DISCIPLINE POLICY COMMITTEE

Mr. Lamek presented the Report of the Discipline Policy Committee of its meeting on June 14th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

Your Committee met Thursday, the 14th of June, 1990 at one thirty in the afternoon, the following members being present: Mr. Lamek (Chair), Mr. Carey, Mr. R. Cass, Ms. Chapnik, Mr. Cooper, Ms. Graham, The Honourable Mr. Lawrence, Messrs. Lerner, O'Connor, Somerville, Strosberg and Topp. Mr. Epstein was present by invitation for the first item.

Also present: Ms. Angevine, Messrs. Brockett, Conway, Crosbie, Kerr and Tinsley.

A.  
POLICY

1. Investigation of Complaints where Litigation is Pending

Complaints staff have asked for guidelines in handling complaints about members who represent parties opposed in interest where litigation is pending.

Mr. Philip Epstein has also raised this question and asked that it be considered by the Committee. He advises that complaints are often received from one spouse about the lawyer who represents the other spouse in on-going matrimonial proceedings. The lawyer who is the subject of such a complaint is required to respond to Law Society inquiries, even though there may be no prima facie evidence of professional misconduct. Concerns have been raised by members about information passed on to the other side in the investigation process.

In October 1986 Convocation approved procedures which require that a member's response be sent, as a matter of course, to the complainant. At the present time, complaints staff consider withholding correspondence from the complainant when a member requests it or when prejudice to the member's client is obvious.

In other cases where complainants have sued a member for negligence and at the same time complained to the Law Society, concern has been expressed that the Society's investigation process could be used to obtain production of documents which could not otherwise be obtained.

Your Committee recognizes that special considerations arise where the Law Society receives from a solicitor information or documents that are privileged. In such circumstances the Law Society cannot make disclosure to the complainant unless the client, whose privilege it is, gives consent.

Your Committee recommends that Convocation adopt the following policy which is to be in force until Convocation receives and acts upon a report from a subcommittee of the Discipline Committee, inquiring into this matter.

a. Where, in the course of on-going litigation or a continuing transaction, a complaint is received from a third party opposed in interest to the solicitor against whom the complaint is brought, the Law Society will defer its investigation until the completion of the litigation or the conclusion of the transaction.

b. The expectation is that where, in the course of litigation, a complaint is brought against a solicitor opposed in interest, the matter will be pursued in the courts, rather than before the Law Society.

c. Notwithstanding paragraph (a) above, the Law Society may proceed with the investigation of a complaint where:

(i) The solicitor against whom the complaint is laid consents to the investigation proceeding; or

(ii) The chair of the Discipline Committee or a Bencher designated by the Chair certifies that the circumstances are exceptional and authorizes the Law Society to proceed with its investigation.

d. Where, as provided for by paragraph (c) above, the Law Society proceeds to investigate a complaint received during the course of on-going litigation or a continuing transaction from a third party opposed in interest to the solicitor against whom the complaint is brought, the following procedure is to be observed:

(i) The lawyer against whom the complaint is brought shall be advised by the Law Society that he or she has a right to request that specified items not be disclosed to the complainant.

(ii) Where, despite receiving a request for non-disclosure, the Law Society decides to disclose to the complainant items which the solicitor has requested not be disclosed, the solicitor shall first be informed of the decision to disclose and shall be given a reasonable time within which to appeal the decision.

Your Committee has asked Mr. McKinnon to chair a subcommittee to inquire further into this matter. Mr. Cooper and Ms. Graham will be invited to serve on the subcommittee.

2. Alternative Dispute Resolution and Emerging Policy Issue

Requests for comments and suggestions had been received from the Chair of the Sub-Committee on Alternative Dispute Resolution and the Chair of the Research and Planning Committee. The Committee is to consider these requests again at its September meeting.

3. Publication of Reprimands in Committee

The Complaints Department has proposed the publication of selected Invitations to Attend and Reprimands in Committee on a no-name basis. It is hoped that this will inform members of the profession about situations in which misconduct can arise. The proposed procedure is set out in the following paragraph.

Each month the Secretary of the Discipline Policy Committee will obtain a list of Invitations to Attend and Reprimands in Committee. A brief synopsis of selected cases will be sent to the Discipline Policy Committee for approval or amendment. The synopsis, as approved, will be included in the Discipline Policy Committee Report to Convocation so that it can, in due course, be published in the buff pages of the Ontario Reports.

Your Committee adopts this proposal and recommends it to Convocation.

4. Amendment of subsection 57(1) of the Law Society Act

The General Manager of La Federation des Caisses Populaires de l'Ontario Inc. has asked the Law Society to propose to the Government that s. 57(1) of the Law Society Act be amended to permit deposits of mixed trust funds in Credit Unions and Caisses Populaires. The matter was brought to the Discipline Committee because trust funds are involved. A memorandum from the Under Treasurer was before the Committee and is attached as pages A1-A6.

Because of their concern that there be the utmost security for trust deposits, members of the Committee are not satisfied that the Credit Union/Caisse Populaire movement has yet demonstrated sufficient financial stability to justify approval of these institutions as depositaries for trust funds.

Your Committee is of the view that now is not the appropriate time to deal with a matter of this nature, requiring legislative action by the Government.

B.  

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ADMINISTRATION

No items.

C.  

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INFORMATION

1C. AUTHORIZATION OF DISCIPLINE CHARGES

The following table shows the number of requests made by Discipline and Complaints Staff for May 1990.

|            | <u>Sought</u> | <u>Obtained</u> |
|------------|---------------|-----------------|
| Discipline | 0             | 0               |
| Complaints | 4             | 4               |

Total # of charges for 1990

|     |     |   |
|-----|-----|---|
| Jan | 17  |   |
| Feb | 47  | (35 of these Authorizations were for failure to File Forms 2/3) |
| Mar | 19  |   |
| Apr | 7   |   |
| May | 4   |   |
|     | --- |   |
|     | 94  |   |

Approved

ALL OF WHICH is respectfully submitted

DATED this 22nd day of June, 1990

"P. Lamek"  
Chair

Attached to the original Report in Convocation File, copy of:

A-Item 4 - Memorandum from Mr. Donald Crosbie dated June 13, 1990 to the Discipline Committee, Policy Section Meeting, June 14, 1990 re: Requested Amendment of Subsection 57(1) of The Law Society Act. (Marked A1 to A6)

It was moved by Mr. Ruby, seconded by Ms. Bellamy that Item 1 under section A - Investigation of Complaints where Litigation is Pending be referred back to the Committee for further consideration.

Lost

THE REPORT WAS ADOPTED

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ORDERS

Mr. Lamek filed four Discipline Orders with Convocation.

Re: GERALD BRUCE FOX, Toronto

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Gerald Bruce Fox, 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 9th day of May, 1990, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the said Gerald Bruce Fox be Reprimanded in Convocation plus costs of \$750.00.

DATED this 24th day of May, 1990

"L. Ferrier"  
Treasurer

(SEAL - Law Society of Upper Canada)

"R. Tinsley"  
Secretary

Filed

Re: ROY CLIFFORD ROBERTSON, Toronto

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Roy Clifford Robertson, 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 10th day of May, 1990, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the said Roy Clifford Robertson be granted permission to resign his membership in The Law Society of Upper Canada.

DATED this 24th day of May, 1990

"L. Ferrier"  
Treasurer

(SEAL - Law Society of Upper Canada)

"R. Tinsley"  
Secretary

Filed

Re: JAY DUNCAN ROWATT, Toronto

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Jay Duncan Rowatt, 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 6th day of April, 1990, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the said Jay Duncan Rowatt be Reprimanded in Convocation.

DATED this 24th day of May, 1990

"L. Ferrier"  
Treasurer

(SEAL - Law Society of Upper Canada)

"R. Tinsley"  
Secretary

Filed

Re: ROBERT ANDREW KOMINAR, Windsor

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Robert Andrew Kominar, of the City of Windsor, 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 7th day of November, 1988, and the S.35 Report and Decision dated the 14th day of May, 1990, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the said Robert Andrew Kominar be Reprimanded in Convocation and that he be subject to the following conditions :

- (1) The Solicitor may practice only as an employee of another member of the Society or as an employee of a corporation, duty counsel, or as an employee of the government, provided he make full disclosure to the prospective employer of this discipline proceeding.
- (2) The Solicitor submits reports from a psychiatrist or psychologist providing an assessment of the Solicitor, which report shall be supplied annually for a period of two years on the first and second anniversary dates of the Order of Convocation.
- (3) The Solicitor will ensure that books and records for the period January 1, 1985 to April 27, 1989, on which the Solicitor wound up his private practice, which records shall be in accordance with Regulation 573 made under the Law Society Act, are made available for inspection by the Society. The effective date of this term of the Order shall be by the earlier of:

- (i) three months after the date on which the Solicitor obtains employment as a solicitor, or
- (ii) six months after the date of the Order of Convocation in this matter.

DATED this 24 day of May, 1990

"L. Ferrier"  
Treasurer

(SEAL - Law Society of Upper Canada)

"R. Tinsley"  
Secretary

Filed

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SPECIAL COMMITTEE ON DISCIPLINE PROCEDURES

Mr. Yachetti filed with Convocation two Reports of the Special Committee on Discipline Procedures, one dated March 22nd, 1990 and one dated June 22nd, 1990. He indicated that the Reports were filed with Convocation for discussion purposes only.

March 19, 1990

SPECIAL COMMITTEE ON DISCIPLINE PROCEDURES

THE INDEPENDENT BAR

The need for a self-governing legal profession as an independent constitutional institution is rooted in the complexities of our legal system. It derives inevitably in my submission, from the following empirical truths about that system.

First, that the existence of meaningful rights and freedoms depends as a practical matter on three prerequisites:

- (i) That each citizen fully understand both his opportunities and his obligations under the law.
- (ii) That each citizen be able to make the legal system work in relation to him in conformity with its own rules.
- (iii) That the legal system be inherently dynamic - sensitive to error and responsive to change.

Second, that because of the complexity of our legal system none of the three prerequisites can be assured except through the intervention of legal experts.

Third, that the work of legal experts cannot be evaluated by non-experts.

If the separation of government from legal services is a structural necessity in our system, then an independent legal profession must be as much a constitutional institution as an independent judiciary.

The independence of the Bar from the state in all of its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of these members of the law profession by the state must, so far as by human ingenuity it can be so designed, be free from state interference, in the political sense, with the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law. The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally.

## LAW SOCIETY OF UPPER CANADA

### SPECIAL COMMITTEE ON DISCIPLINE PROCEDURES - INTERIM REPORT

#### Overview

In October 1989, Convocation appointed a Special Committee of Benchers to look into the current discipline procedures and to recommend how these procedures could be improved. Roger Yachetti was appointed to be the Chair of this Committee, and Harvey Strosberg was appointed Vice Chair. The following Benchers were also appointed to the Committee: G. Arthur Martin, Mr. Thomas Bastedo, Mrs. Netty Graham, Ms. Fran Kiteley, Messrs. Paul Lamek, Dennis R. O'Connor, Clayton Ruby, Marc. J. Sommerville, Stuart Thom, Douglas Thoman and Robert C. Topp. The following non-Benchers were also asked to participate: Donald Crosbie, Scott Kerr, Arthur Stone, Richard Tinsley and Reg Watson. Patrick Ballantyne acted as the Committee-Secretary. Anne Merritt sat as an observer for the Ministry of the Attorney General.

The Treasurer provided the Special Committee with "Terms of Reference" (attached, Appendix 1) which the Special Committee decided should be interpreted broadly.

Convocation also appointed a second Special Committee to review the complaints procedure. This Committee, which was chaired by June Callwood, is to report to Convocation under separate cover after having been in close contact with the Special Committee on Discipline Procedures. It is hoped that with the benefit of the reports of these two Committees, Convocation might be able to review, evaluate and adapt for the future the complaints and discipline process, the most significant and important functions of self-regulation carried on by the Society.

#### Preliminary Tasks

Your Committee had initial concerns about the potential for overlap between the two Special Committees looking into the complaints and discipline procedures. At the first meeting of the Special Committee on Discipline Procedures, it heard from Ms. Callwood, who outlined the mandate of her Committee and identified some specific areas which she expected her Committee to review and make recommendations on. After some discussion, your Committee agreed that a line could be drawn between the work of the Special Committee on Discipline Procedures and that of its sister Committee on Complaints. It was agreed that your Committee should review the procedure from the point that an authorization for a formal complaint is requested. It was also agreed that it should visit the question of the amalgamation of the two Committees at a later date. The Committee then agreed to break its work down into subcommittees that would review specific areas of concern for

your Committee. Accordingly, Mr. Bastedo and Mr. Topp each prepared briefs; Mr. Topp reviewed the legislation governing other professions in the Province of Ontario and Mr. Bastedo undertook a review of the discipline procedures in other jurisdictions. These reports proved to be helpful to the Committee in its deliberations.

In addition to these two reports, the Chair asked Ms. Kiteley, Messrs. O'Connor and Somerville to prepare a list of issues which this Committee must consider in furtherance of its mandate. This list was prepared, submitted and later streamlined by Ms. Kiteley and Mr. Bastedo and continues to be amplified by the Committee. This list which is attached as Appendix 2 thus has become the "roadmap" used by your Committee.

Your Committee also had the benefit of various reports prepared by Reginald Watson with the assistance of the complaints and discipline staff which outlined the current complaints and discipline procedures in place at the Society. Finally, the Committee also had the benefit of materials prepared by Anne Merritt of the Attorney General's office, which reviewed a number of matters of concern to your Committee.

#### Self-Regulation

Your Committee has resolved that the role of the Law Society of Upper Canada as a self-governing body must be maintained and with it the power to discipline its members.

Your Committee felt strongly that an independent profession of law is as necessary as an independent judiciary and that a necessary requirement of this independence is the right to self-regulate and self-discipline. It was agreed that independence from the judiciary was also necessary and accordingly, the only role for the courts should ideally be that of judicial review.

#### Views of Interested Parties

Your Chair caused to be sent out letters to persons with considerable experience in the discipline process including past and current discipline counsel both for the Society and for the solicitors charged, as well as support staff. This letter sought the input of the persons into the work of your Committee. These persons were also invited to make oral submissions to your Committee. Numerous written replies were received, all well thought out and insightful. Similarly, oral submissions of great assistance were made by numerous solicitors possessing considerable experience in the discipline process. (Attached as Appendix 3 is a list of those solicitors who made submissions). Both the oral and written submissions are currently being compiled and reviewed carefully. It is fair to say at this point that there were numerous common threads in the submissions, one of which has already formed the basis of a resolution of your Committee. This resolution will follow presently.

#### Jurisprudence

It was resolved by your Committee that, where ever possible, past decisions of Discipline Committees should be compiled and made available to interested persons. Further, your Committee resolved that all Discipline Committees from this point on should be required to prepare written reasons for their decision or oral reasons for their decision on the record in circumstances where the complaint is dismissed or a reprimand in Committee is imposed. Convocation is strongly encouraged to consider and pass this resolution immediately.

It was pointed out by numerous discipline counsel that there is a lack of reported discipline decisions, especially at the Committee level. These counsel cited with favour the work of Stephen Traviss in his compilation of discipline decisions of Convocation. Nevertheless, they felt that a compilation must be prepared, if possible, of discipline decisions at the Committee level, including those in which a complaint is found not established or where a complaint is withdrawn. Your Committee agrees. There is a real lack of jurisprudence available to discipline and especially defence counsel. It is a situation which must be remedied.

#### Complaints Authorization

Your Committee has adopted a resolution to recommend that a new committee be created to authorize complaints. This Complaints Authorization Committee should consist of one Bencher, one lay-Bencher and one non-Bencher lawyer. It was also resolved that the solicitor should have no right of representation before this Authorization Committee and that the decision to authorize a complaint should remain a purely administrative one. The method of appointment to this Committee is still a subject for discussion by your Committee. Your Committee continues to consider the expansion of the role of lay-persons and non-Bencher lawyers in the disciplinary process, citing with favour the work of the four lay-Benchers currently provided for in the legislation. Currently being discussed is the possibility of non-Bencher lawyer and lay participation in the complaint authorization process as well as the participation of these persons on discipline panels. While specifics as to their appointment and as to the exact mandate of these persons have yet to be worked out by your Committee, it already has been agreed that a lay-person, Bencher or otherwise, should sit on a Complaint Authorization Committee.

#### Role of Convocation

This very important matter is being reviewed extensively by your Committee, but, as of this date no firm recommendation has been formulated.

#### Work To Do

Your Committee has met seven times since its appointment and expects to require several more meetings before the final report is brought before Convocation. This interim report is submitted to apprise Convocation of the work that is being done by your Committee and to urge Convocation to adopt the recommendations of this Committee with regard to Discipline Committee Jurisprudence. Your Committee looks forward to presenting its final report on this most important subject matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

This 22nd day of March, 1990

"R. Yachetti"  
Chair

#### SPECIAL COMMITTEE ON DISCIPLINE PROCEDURES

#### RESOLUTIONS TO DATE - JUNE 22, 1990

#### PREAMBLE

Due to the complex nature of the issues being considered by this

Committee, as well as the importance of discipline procedures to this self-governing profession, this Committee decided that all interim resolutions made by it were to be revisited before the final report of the Committee is brought before Convocation. What follows is a summary of those resolutions made by your Committee to date.

#### SELF-REGULATION

The Role of the Law Society of Upper Canada as a self-governing body must be maintained and with it the power to discipline its members.

#### INDEPENDENCE

Steps should be taken to ensure the independence of the prosecutorial branch of the Law Society to all reasonable degrees, subject to qualification.

#### ROLE OF SECRETARY IN REFERRING COMPLAINTS FOR AUTHORIZATION

A discussion took place by the Committee of an issue raised by the Chair pursuant to the Terms of Reference; should the Secretary of the Law Society continue to have a role in referring matters to the Chair of Discipline or his/her predecessor. There was no consensus of opinion on this issue which the Committee agreed to revisit.

#### COMPLAINTS AUTHORIZATION

Your Committee recommends that a new committee be created to authorize complaints. This Complaints Authorization Committee should consist of one Bencher, one lay-Bencher and one non-Bencher lawyer. It was also resolved that the solicitor should have no right of representation before this Authorization Committee and that the decision to authorize a complaint should remain a purely administrative one. It was the consensus of the Committee that there should be no review of that decision available.

#### DISCLOSURE

The Committee adopted the following guidelines:

##### Material to be Disclosed

In keeping with the jurisprudence that the Society proceedings are non-criminal in nature, full disclosure will be made by both the Society and the solicitor in order to fulfill the Society's mandate that the public be protected in the most efficient fashion. Disclosure pursuant to Law Society proceedings is only for the purpose of Society proceedings. At the request of either party, the following disclosure must be made:

- 1) Copies of all documents that either party intends to introduce into evidence. In certain cases original documents may have to be produced and if the parties cannot agree, a motion may be brought before the Discipline Committee. The word "document" is to be given a broad interpretation;
- 2) copies of all statements of persons with relevant evidence;
- 3) where written statements do not exist, a summary of the anticipated evidence of those persons;
- 4) copies of all medical and laboratory reports.

Specific Disclosure Requirements for the Society

In addition to the mutual disclosure requirements stated above, the Society has the following specific disclosure requirements:

- a) Particulars of the member's discipline history at the Society;
- b) copies of any investigation reports.

Material Not To Be Disclosed

The following material need not be disclosed by either party:

- a) Internal notes and memoranda;
- b) legal research.

Sanctions

- a) The party denied disclosure may make a motion to the Discipline Committee for an order requiring disclosure to be made in a reasonable period of time along with an appropriate order for costs. Failure to abide by this order may lead to the Committee certifying the failure to disclose as contempt of the Committee. Upon application, the Chair of the Committee may certify the contempt to the Supreme Court which may thereafter inquire into the alleged offence;
- b) both parties will be prohibited from using documents during the hearing which were not disclosed prior to the hearing.

Ongoing Nature of Disclosure

The disclosure process is ongoing and continues until the proceedings are at an end. Any relevant document which comes to the attention of either party must be disclosed even if the formal disclosure process, as indicated above, has been completed.

DISCIPLINE HEARINGS PANEL

- a) The Discipline Hearings Panel should make a decision on the finding of professional misconduct and penalty;
- b) the hearings panel should be chosen impartially by an independent "hearings co-ordinator"; and
- c) the selection of the panelists should be made having due regard for any request by counsel for a panelist with "particular qualifications". It should be a policy of the Law Society that such requests will be honoured wherever possible;
- d) each Discipline Hearings Panel shall include one lay-person, Bencher or otherwise;
- e) the majority view of the Committee was that the Law Society should not involve non-Bencher lawyers on the Discipline Hearings Panels. There was a significant minority view of the Committee which felt that the involvement of non-Bencher lawyers on the Discipline Hearing Panel was desirable.

CHANGE OF COUNSEL

The Committee passed in principle the recommendation that a Notice of Change of Solicitors should be required where counsel is discharged or for whatever reason declines to act for the solicitor. This should be accomplished by way of an appearance by counsel before the Discipline Hearings Panel. This procedure is meant to mirror the one currently in place in the Provincial Courts where a solicitor of record is required to appear before the judge before he/she may be removed from the record.

WITHDRAWAL OF COMPLAINTS

The Discipline Hearings Panel must have control of its own process and therefore, once a complaint has been made before the Committee, it may not be withdrawn without the consent of the Committee.

COSTS

The Discipline Hearings Committee should have power to award costs at its discretion, any such award being subject to appeal to the body having jurisdiction to hear an appeal on the merits of the case.

PENALTIES

- a) The Discipline Hearings Panel should have the power to issue an interim suspension, however, hand-in-hand with this is the need to expedite hearings in such instances; and
- b) the following range of penalties is being considered by your Committee:
  - (i) Disbarment;
  - (ii) permission to resign;
  - (iii) suspension;
  - (iv) interim suspension;
  - (v) fines;
  - (vi) reprimands.

The Committee is considering the following as penalties that could be imposed as terms of probation or in tandem with, for instance, a reprimand:

- (i) Mandatory community service;
- (ii) mandatory medical treatment, including drug or alcohol testing;
- (iii) mandatory psychological testing;
- (iv) mandatory continuing legal education;
- (v) notification of partners and associates of the members disciplinary situation;
- (vi) referrals to other Law Society Committees, such as, Professional Standards;

- (vii) referral to Practice Advisory;
- (viii) restrictions on practice;
- (ix) restrictions on the use of trust accounts;
- (x) co-signing controls.

The list of penalties as well as probationary terms are not meant to be exhaustive, but only an indication of your Committee's belief that the Discipline Hearings Committee should have as much flexibility as possible in imposing penalties.

- (c) The Committee unanimously agreed that all reprimands are to be delivered in public where the hearing has been held in public.

#### REVIEW OF DISCIPLINE HEARINGS PANEL

##### Option 1

An appeal from the Discipline Hearings Panel's finding as to misconduct and penalty should lie to a Discipline Appeal Committee consisting of nine Benchers (at least two of who are lay-Benchers) with a minimum of five Benchers (at least one of who must be a lay-Bencher). The Committee would sit for a period of one year, having been assigned by the Treasurer and approved by Convocation. Convocation would no longer convene for discipline matters.

##### Option 2

The procedure laid down in ss. 33, 34 and 44 of the Law Society Act, when properly understood and followed is quite workable. The confusion and misunderstanding regarding Convocation's function is largely the result of the language used in Regulation 9 which should be amended to bring it into conformity with the Act.

Under this model, the Discipline Hearings Panel should be restricted to determining questions of professional misconduct. Convocation's role should be restricted to questions of penalty. The findings of the Discipline Hearings Panel as to professional misconduct should not be relitigated before Convocation.

#### MINOR OFFENCE PROCEDURE

There should be a class of minor offences that may be dealt with by a one-member panel, with safeguards put in place with respect to the type of offence, procedure and range of penalty available, as well as transferability by either party or the panel. Examples of such offences include failing to reply and failure to file a Form 2/3. A specific list of disciplinary offences that could be dealt with by a one-member panel and details of the procedure shall be determined at a later date.

#### JURISPRUDENCE

Wherever possible, past decisions of Discipline Committees should be compiled and made available to interested persons. Further, all Discipline Hearings Panels from this point on should be required to prepare written reasons for their decisions or oral reasons for their decision on the record, including circumstances where the complaint is dismissed or a reprimand in Committee is imposed.

INCAPACITY

The following model has been adopted by this Committee to deal with questions of a member's incapacity to practise law:

1. The Secretary of the Law Society may refer a matter to the Hearings Coordinator where the Secretary is satisfied that there is concern about a member's capacity to practice law.
2. The Hearings Coordinator shall select a Bencher who shall determine whether an inquiry/investigation into a member's capacity is warranted.
3. That one-member panel may order a member to undergo a psychiatric examination, failing which the member may be suspended.
4. The one-member panel shall review the evidence obtained in the investigation and, if warranted, may refer the matter to the Chair of the Standards Committee for a hearing.
5. When in receipt of the Report of the one-member panel, the Chair of the Standards Committee shall appoint a Fitness to Practice Panel who may order an initial or further psychiatric examination.
6. The Fitness to Practice Panel shall make a finding that either the member is:
  - a) Not incapacitated; or
  - b) incapacitated.The Committee may then render a disposition.
7. The Report of the Fitness to Practice Committee may be reviewed/appealed in the same way as the findings of a Discipline Hearing Panel, i.e. Discipline Appeal Committee or Convocation.
8. Divisional Court.
9. A procedure similar to that currently in place for re-admission of a member (as outlined in Section 47 of the Law Society Act) shall be put in place.
10. A Discipline Hearings Committee may refer a matter to the Fitness to Practice Panel and the Discipline Committee Hearing shall be held in abeyance until the Fitness Hearing has been completed.

June 22, 1990

"Roger Yachetti"  
Roger D. Yachetti  
Chair  
Special Committee on  
Discipline Procedures

THE REPORTS WERE RECEIVED

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SPECIAL COMMITTEE ON COMPLAINTS PROCEDURES

Ms. Callwood presented the Report of the Special Committee on Complaints Procedures.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Special Committee on Complaints Procedures is comprised of the following members: Meg Angevine (Staff), Harry Arthurs (President, York University), Patrick Ballantyne (Staff), June Callwood, Tom Carey, Phil Epstein, Roderic Ferguson, Netty Graham, Scott Kerr (Staff), Jeff Lyons, Colin McKinnon, Ann Merritt (Observer, Attorney-General's Department), Rita Mosevich (Staff), Mark Orkin (Consultant), Kevin O'Toole (Staff), Allan Rock, Clay Ruby, Arthur Scace, Jim Spence, Jim Wardlaw, John Whyte (Dean, Queen's University Faculty of Law ).

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A. FIRST REPORT

The Committee's first report was tabled at Convocation in February, 1990 and was discussed at the March meeting. The third recommendation in the report dealt with the establishment of Complaints Assistance Panels to assist parties who appear to have difficulty formulating written complaints. The Committee has since consulted with the Legal Aid Committee and wishes to submit a revised recommendation which reads as follows:

3. Recommendation

The Law Society of Upper Canada adopt a policy of assisting complainants who have difficulty filing a written complaint through lack of literacy or competence in English or French, or a state of confusion over the central misconduct issue in the complaint. The process will be initiated by the Complaints Department staff who, for a two-year trial period shall have the discretion to refer such complainants to district offices of the Legal Aid Plan. The Complaints Department will bear the cost of disbursements such as translators' fees.

Note: Motion, see page 172.

B. SECOND REPORT

This is the second in a series of reports setting out the results of the Special Committee's deliberations.

INTRODUCTION

Part of the mandate given the Special Committee on Complaints Procedures by the Treasurer was examination of the following:

"Alternative complaint resolution procedures that can efficiently and effectively deal with complaints involving shoddy work or negligence where the amount of money involved does not warrant litigation to settle the matter."

The Special Committee studied the incidence of such "shoddy work" complaints. The results were startling.

The following chart provides figures for 1987 through 1989 on types of complaints in which allegations of shoddy work are normally made:

| <u>NATURE</u>                           | <u>1987</u> | <u>1988</u> | <u>1989*</u> | <u>TOTAL</u> |
|---|-------------|-------------|--------------|--------------|
| Undertakings                            | 162         | 171         | 125          | 458          |
| Delay                                   | 407         | 368         | 189          | 964          |
| Failure to Account/Report               | 231         | 273         | 179          | 683          |
| Failure to Follow Client's Instructions | 198         | 115         | 179          | 683          |
| Negligence                              | 278         | 352         | 192          | 822          |
| Failure to Communicate                  | 301         | 195         | 152          | 648          |
| Misleading Clients & Others             | 43          | 41          | 14           | 98           |
| Total                                   | 1620        | 1515        | 917*         | 4052         |

\*1989 figures are incomplete because many files remain open and the nature and area of the complaint is not as yet identified.

The total of 4052 represents approximately 40 % of all complaints files opened by the Law Society's Complaints Department over the past three years. The discipline process as presently constituted is not being used nor does the Committee believe it is suitable for the disposition of this type of complaint. In some cases where a pattern of such matters are reported, the lawyer is referred to the Professional Standards Committee's Practice Review Programme. While this may ultimately enhance a lawyer's competence, it will not address the frustration or dissatisfaction a complainant has experienced. Essentially, the present complaints process offers no remedy to complainants in these circumstances nor do these matters result in disciplinary action even though the lawyer has, strictly speaking, breached the provisions of Rule 2 of the Professional Conduct Handbook.

Lay Benchers who sit as Complaints Commissioners have become aware of this situation. Many complainants bring legitimate grievances which the Society has no apparatus even to acknowledge. Complainants usually are people who are driven to emotional extremes by the loss of property, spouse, child, money, job, or simple dignity. One man was in grief because his beloved garden was flooded and his lawyer had failed to take preventative measures; his sorrow was real and compelled a response.

On the other hand, the Committee recognizes that people are not infrequently wrong to blame lawyers for the disaster that has befallen them. In some 73 % of cases heard by Complaints Commissioners, no fault of the lawyer's could be seen. In the other 27% of cases, however, the Commissioners believed that the complaint was a valid one and were unhappy that nothing could be done.

The problem is one of degree. The matter may be referred to the Chair of Discipline, but that person understandably is unwilling to bring a lawyer before a panel for minor matters.

As a result, cases sent from Complaints Commissioners almost never result in action by the Discipline process. Of 90 cases heard by Complaints Commissioners in 1988, 31 were returned for further action. In only two cases the concerns of the Commissioners were upheld. In 1989, 143 complaints were reviewed of which 35 were referred for further action. Only one was upheld.

The situation causes Complaints Commissioners great distress. More importantly, it leads the public to feel a lack of confidence in the Society.

#### RECOMMENDATIONS

The Special Committee wishes to address this difficulty with the following recommendations.

##### 1. Recommendation

That a procedure be developed within the Complaints process to deal more effectively with justified complaints alleging shoddy work and minor instances of unprofessional conduct.

Note: Amendment, see page 177.

##### Explanation

In its first Working Paper which was submitted at February Convocation, the Committee proposed that a multifaceted complaints process be developed that would be characterized by different "streams" into which complaints could be placed, depending on their nature and gravity. One stream referred to in that paper would see minor complaints being resolved by informal telephone mediation. The Committee believes however that the majority of complaints will still be handled by an exchange of correspondence that will lead staff to one of the following conclusions:

1. that the complaint lacks merit and no action by the Society is warranted,
2. that the complaint discloses serious misconduct by a lawyer and should be referred to the Discipline process,
3. that the nature of the complaint warrants referral to the Audit Department,
4. that the complaint is justified but the lawyer's conduct does not warrant a referral into the discipline process.

The recommendations set out below discuss how an improved process would deal with complaints falling into the fourth category.

##### 2. Recommendation

That the Law Society of Upper Canada describe a lesser category of misconduct as "Unsatisfactory Professional Practice."

##### Explanation

The Special Committee examined the language in other jurisdictions. The Law Society in England calls informally "shoddy work" and more formally "Inadequate Professional Services." In New South Wales it is known as "Unsatisfactory Professional Conduct." Both are commendably mild in tone but the Special Committee tended to prefer Unsatisfactory Professional Practice as striking the appropriate tone of gentle reproof.

3. Recommendation

That Rule 2 in the Society's Professional Conduct Handbook be amended to incorporate, where necessary, the appropriate references to Unsatisfactory Professional Practice. The following revisions are proposed:

- a) Amending Rule 2(b) to read as follows:

"The lawyer should serve the client in a conscientious, diligent and efficient manner and should avoid Unsatisfactory Professional Practice."

- b) The title for Rule 2, Commentary 8 be changed to read:

"Unsatisfactory Professional Practice"

- c) The introductory paragraph of Rule 2, Commentary 8 be changed to read:

"Numerous examples could be given of Unsatisfactory Professional Practice which do not meet the standard of practice required by the Rule. The list which follows is illustrative, but not by any means exhaustive."

- d) The text of Commentary 9 be changed to read as follows:

"It will be noted that the Rule does not require a standard of perfection. A mistake, even though it might be actionable for damages in negligence, would not necessarily constitute a failure to maintain the standard set by the Rule, but evidence of gross neglect, or Unsatisfactory Professional Practice or a pattern of neglect or mistakes in different matters may be evidence of such a failure regardless of tort liability. While damages may be awarded for negligence, incompetence or Unsatisfactory Professional Practice can give rise to the additional sanction of disciplinary action."

4. Recommendation

That the Complaints Department have the authority to suggest a range of remedies to lawyers who are judged by the staff to have violated Rule 2 covering Unsatisfactory Professional Practice or engaged in some other form of minor misconduct. This proposal will take effect when the following conditions are met:

Note: Amendment, see page 177.

- a) the necessary staff have been assembled and trained to negotiate and process such complaints,  
b) the cost of the new process have been estimated and approved.

Explanation

It is anticipated that this innovation will permit the Law Society to effectively resolve a much larger number of complaints than the existing process permits. Lawyers will be asked to comply voluntarily with remedies suggested by staff. These remedies would include a letter of apology, returning a modest part of a fee, the release of client files, the completion of legal work at reduced or no cost, rectification, a caution letter, the payment of financial obligations incurred in connection with the practice of law, participation in the Law Society/Ontario Medical Association mediation procedure.

Note: Amendment, see page 177.

If the lawyer has been the subject of repeated complaints of the same character, the matter will be referred to the Professional Standards Committee. It is proposed that referrals be made after a fixed number of complaints with some variance permitted based on the area of law in which the lawyer is engaged.

This "stream" will be marked by a tone of conciliation and helpfulness. It is recognized that an adversarial approach is inappropriate for complaints of this mild nature and would only impede resolution and exacerbate the situation.

5. Recommendation

The Law Society of Upper Canada will create the office of Complaints Resolution Commissioner, who will independently review cases where lawyers refuse to comply with staff suggestions to remedy isolated cases of Unsatisfactory Professional Practice. The decisions of the Complaints Resolution Commissioner will be binding on members. This proposal will take effect simultaneously with Recommendation 4.

Note: Amendment, see page 176.

Explanation

When lawyers are not willing to comply with the remedies suggested by Law Society staff, a review and appeal procedure will be required. The Special Committee considered many models. New South Wales, for example, has a three-person panel consisting of one lay person and two Benchers. The Committee decided on a simpler model, a Complaints Resolution Commissioner, with the duties set out in the recommendation. The Commissioner could be a retired judge, a lawyer, or a lay person well versed in the law. Such a Commissioner, appointed for a fixed period, would review the decision of the staff and come to a decision that would be binding on the lawyer in question. The Commissioner will have discretion to consult the complainant, the lawyer, or others as appropriate. The Commissioner will be paid by the Law Society but on a per diem basis. This person will not be an employee of the Law Society. The issue of who will appoint the Commissioner was left undecided but possibilities are a panel of Benchers including lay Benchers or the Attorney General.

Failure to comply with the decision of the Complaints Resolution Commissioner will result in a referral to the Discipline process on the basis of the member's failure to cooperate with the Law Society.

Note: Amendments, see page 177.

6. Recommendation

That the Complaints Resolution Commissioner not be located within the present Law Society of Upper Canada premises.

Note: Amendment, see page 177.

Explanation

The public perception of the Complaints Resolution Commissioner would be enhanced if the adjudicative branch of the Law Society were separated from the surrounds of Convocation. In the interests of the appearance as well as the practice of autonomy, it is necessary that distinct quarters be found a distance apart.

7. Recommendation

That the Complaints process and the activities of the Standards Committee be kept separate.

Explanation

This decision was reached after discussions were held with representatives of the Standards Committee. It was concluded that the objectives of Complaints and Standards were quite different and that any procedure that attempted to encompass both could produce undesirable results and perceptions. The Special Committee has set as its major objective the creation of a complaints process that is accessible, resolution oriented, avoids undue delay, and is perceived to be fair by both complainants and lawyers. It is submitted that programmes administered by Standards such as the Practice Review Programme and LINK are not and should not be geared toward meeting these objectives. The Committee believes that the underlying purpose of all Standards programmes is to identify and address problems of competency. The remedies proposed for lawyers in these programmes will usually have nothing to do with an individual complainant and will often involve a lawyer in a lengthy process of rehabilitation. While it is true that an overlap will often arise between Complaints and Standards when a complainant alleges shoddy work, the Committee is of the view that the problems exhibited in the complaint can be better addressed if each process deals with it from its own distinct perspective. At the same time, it is recommended that there should be no barriers impeding the flow of information between staff in the Complaints and Standards Departments.

8. Recommendation

That the existing function of Lay Benchers as Complaints Review Commissioners be continued and that Reviews occasionally be held in regional centres.

Explanation

It is recognized that staff will continue to take the position in a large number of cases that no action by the Society is warranted. The Committee believes that complainants met with this position should continue to have the right to "appeal" decisions of the complaints staff. It is proposed however that the lay Bencher should have the option of referring a matter to the Complaints Resolution Commissioner or to discipline authorities with a recommended disposition in the appropriate circumstances. It is anticipated, however, that many kinds of complaints which now find their way to the Complaints Review will be satisfied in future by the introduction of innovations such as Telephone Complaints Resolution and the new "stream" aimed at resolving minor justified complaints.

The purpose of occasionally holding Reviews in regional centres is to make this procedure more accessible to complainants throughout the Province.

All of which is respectfully submitted

June Callwood  
Chair

It was moved by Ms. Callwood, seconded by Mr. Carey that Recommendation 3 regarding providing assistance to members of the public in drafting their complaint be approved.

Carried

It was moved by Mr. Farquharson, seconded by Mr. Furlong that Recommendations contained in the second Report be put over for consideration until the September Convocation.

Lost

Mr. Topp indicated that he wished to speak to the Recommendations of the Committee but he wished Convocation to have before it copies of correspondence that he had previously filed with the Committee. The matter was stood down while copies of the relevant material were obtained.

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POINT OF PRIVILEGE

Mr. Lamek rose on a point of privilege to address press stories and comments alleged to have been made by Mr. Stephen Sherriff, the former Senior Counsel-Discipline of the Law Society regarding the Dewar Report. Mr. Lamek at the conclusion of his remarks indicated to Convocation that he made the remarks in his personal capacity and was not to be taken as speaking for the Law Society or the Discipline Committee.

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LEGISLATION AND RULES COMMITTEE

Mr. Noble presented the Report of the Legislation and Rules Committee of its meeting on June 14th, 1990.

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 14th of June, 1990 at 11:15 a.m. the following members being present: B. Noble (Chair), S. Lerner (Vice-Chair), R. Cass and D. Thoman. D. Crosbie and P. Bell also attended.

A.  

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POLICY

1. AMENDMENTS TO SECTION 31 OF THE LAW SOCIETY ACT

The Secretary reported that Convocation on May 25th, 1990 approved the Report of the Finance Committee of May 10th, with the recommendation that section 31 of the Law Society Act be amended to include full time members of the Ontario Municipal Board and other provincial and federal tribunals with similar quasi-judicial functions who are precluded from practising law.

Mr. Arthur Stone, Counsel for the Society, has drafted an amendment to cover the above policy change.

RECOMMENDATION: It is recommended that section 31 of the Law Society Act be amended by striking out "or" at the end of clause (b), by adding "or" at the end of clause (c) and by adding thereto the following clause:

- (d) a member of a tribunal that has a judicial or semi-judicial function, where the holding of the office prohibits the member from engaging in the practice of law.

With this amendment section 31 will read as follows:-

- 31. The membership of any member or former member who has assumed office or hereafter assumes office as,
  - (a) a full-time judge under any Act of the Parliament of Canada;  
or

- (b) a full-time judge under the Provincial Courts Act, or the Small Claims Courts Act; or
- (c) the Senior Master or a full-time master or a full-time assistant master or a full-time local master of the Supreme Court or a full-time taxing officer,
- (d) a member of a tribunal that has a judicial or semi-judicial function, where the holding of the office prohibits the member from engaging in the practice of law,

is, while he continues in any such office, in abeyance, and, upon his ceasing to hold such office, shall be restored by his giving notice in writing to such effect to the Secretary. R.S.O. 1970, c. 238, s. 31.

2. AGENTS TO BE APPOINTED IN ONTARIO ON OCCASIONAL APPEARANCE APPLICATIONS

The Secretary reported that Convocation on May 25th, 1990 approved the Report of the Admissions Committee of May 10th, 1990 in which it was recommended that the Society seek an amendment to Regulation 573 subsection 6(2) requiring an applicant for an occasional court appearance in Ontario to provide the name of an agent who is a member of the Law Society in good standing and resident in Ontario who will serve as the applicant's agent for service of documents in Ontario.

Mr. Arthur Stone has drafted an amendment to subsection 6(2) to Regulation 573 to cover the above policy change.

RECOMMENDATION: It is recommended that subsection 6(2) of Regulation 573 be amended by adding at the end thereof "and shall file with the Society the name and address of a member of the Society who is a resident of Ontario and who will act as the applicant's agent for service in Ontario".

With this amendment subsection 6(2) will read as follows:-

(2) The applicant shall undertake to Convocation that he will not otherwise engage in the practice of law in Ontario and shall file with the Society the name and address of a member of the Society who is a resident of Ontario and who will act as the applicant's agent for service in Ontario".

B.  
ADMINISTRATION

1. AMENDMENTS OF RULES MADE UNDER THE LAW SOCIETY ACT RE SOLICITORS' OATH

The Secretary reported that as a result of court merger it is necessary to change the Solicitors' Oath in Rule 51 of candidates being called to the bar. Andrew Brockett, Director of Research, has redrafted the oaths.

RECOMMENDATION Your Committee recommends that

(1) the Solicitors' Oath in Rule 51(3) be amended immediately so that it reads as follows:

You also do sincerely promise and swear that you will truly and honestly conduct yourself in the practice of a solicitor according to the best of your knowledge and ability. So help you God.

Vous promettez de meme sincerement et jurez d'agir avec franchise et honnetete dans vos fonctions de procureur, conformement a votre connaissance et a votre competence.  
Ainsi Dieu vous soit en aide.

(2) A motion as provided by subrule 1(2) be made at Convocation immediately after the Report is adopted so as to bring the new wording of the Solicitors' Oath into effect.

(3) The Treasurer write to the Chief Justice of Ontario, the Chief Justice of the High Court and the Associate Chief Justice of Ontario with a copy to the Attorney General to notify of the change to the Solicitors' Oath and explain the need for clarification as to the court to which solicitors will be admitted after the Courts of Justice Act comes into force. The letter would ask for their advice as to how this matter can best be settled and explain that, in the meantime, no change is being made to subrule 53(4).

(4) No change should be made to subrule 53(4) until advice is received from the Chief Justices and the Attorney General. The practical effect of making no change to subrule 53(4) will be that when the Courts of Justice Amendment Act comes into force, the reference in the subrule to "the Supreme Court of Ontario" will, by virtue of s.160 of the Act, be deemed to be a reference to the Ontario Court (General Division).

## 2. PROFESSIONAL STANDARDS COMMITTEE

The Secretary reported that the Chair of the Professional Standards Committee has forwarded to this Committee, a proposal for significant changes to the Practice Review Program. The discussion paper, dated March 8th, 1990, is being sent to the Legislation and Rules Committee as well as other Committees in order that comments concerning the proposed changes to the Law Society Act, Regulation 573, the Rules under the Law Society Act and Rules of Professional Conduct can be considered.

RECOMMENDATION That the discussion paper be referred to Arthur Stone, Counsel for the Society, to indicate the steps that should be taken to implement the proposed policy changes.

## 3. EMERGING POLICY ISSUES

The Secretary reported that a memorandum was received from the Chair of the Research and Planning Committee concerning possible emerging policy issues to be discussed by that Committee during the coming year. A copy of Mr. Spence's memo to Mr. Noble was sent so that the Committee could consider whether there are any emerging policy issues that this Committee should refer to the Research and Planning Committee to be discussed during the coming year.

RECOMMENDATION: The Secretary was instructed to advise the Research and Planning Committee that there are no items to be referred to that Committee for discussion during the coming year from the Legislation and Rules Committee.

## C. INFORMATION

### 1. AMENDMENT TO BILL 45

The Secretary reported that at a meeting with Legislative Counsel at Queen's Park it was agreed that Bill 45 would be amended by inserting the following to place full-time Ontario Municipal Board members and other similar tribunal members in abeyance:-

31(1) The membership of a person is in abeyance while the person holds office,

(a) as a full-time judge of any Federal, Provincial or Territorial Court or as a full-time master of the Ontario Court (General Division); or

- (b) as a full-time member of the Ontario Municipal Board or as a full-time member of a tribunal that has a judicial or quasi-judicial function and that is named in the regulations for the purposes of this section.

Restoration

- (2) Upon ceasing to hold an office described in subsection (1), a person whose membership is in abeyance may apply to the Secretary to have the membership restored and, subject to subsection (3), the Secretary shall restore it.

Exception

- (3) Convocation may by order refuse to restore the membership of a person whose membership is in abeyance if, after due investigation by a committee of Convocation, it is found that the person was removed or resigned from an office described in subsection (1) because of,
  - (a) conduct that was incompatible with the execution of the office;
  - (b) a failure to perform the duties of the office;
  - (c) conduct that, if done by a member, would be professional misconduct or conduct unbecoming a barrister and solicitor.

In addition, section 63, the Regulation section of the Law Society Act, would be amended by adding a paragraph:-

- 2a. naming for the purposes of section 31 tribunals that have a judicial or quasi-judicial function.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of June, 1990

"B. Noble"  
Chair

The Committee was asked to consider changing the reference in Item 2 under section A - Agents to be appointed in Ontario on Occasional Appearance Applications - from "resident" to "office in Ontario". Mr. Noble indicated he would take this under advisement.

Ms. Kiteley rose and asked the Committee to review the proposed legislative amendments to ensure that they were gender-neutral. Mr. Noble undertook to do so.

THE REPORT WAS ADOPTED

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SPECIAL COMMITTEE ON COMPLAINTS PROCEDURES

The debate on the Special Committee on Complaints Procedures then resumed.

Several amendments to the Report were made:

It was moved by Ms. Callwood, seconded by Mr. McKinnon that Recommendation 5 be amended by deleting in the last sentence the words "will" and "simultaneously with Recommendation 4" and to insert the words "to" and "once the Law Society Act has been amended" so that the Recommendation would provide that this proposal is to take effect once the Law Society Act has been amended.

It was moved by Mr. McKinnon, seconded by Mr. Howie that Recommendation 1 be amended by deleting the words "shoddy work" and "unprofessional conduct" and substituting "unsatisfactory professional practice" so that the Recommendation now reads:

"that a procedure be developed within the Complaints process to deal more effectively with justified complaints alleging minor instances of unsatisfactory professional practice."

Carried

It was moved by Mr. McKinnon, seconded by Mr. Rock that Recommendation 4 be amended by deletion of the words "or engaged in some other form of minor misconduct" so that the Recommendation now reads:

"that the Complaints Department have the authority to suggest a range of remedies to lawyers who are judged by the staff to have violated Rule 2 covering Unsatisfactory Professional Practice."

Carried

It was moved by Mr. McKinnon, seconded by Mr. Hickey and accepted by the Committee that the explanation under Recommendation 4 on page 4 be amended to delete "a letter of apology" and the insertion of the following: "letter of explanation from the lawyer to the client" so that sentence would read:

"These remedies would include a letter of explanation from the lawyer to the client,"

and Ms. Callwood amended the Report further at page 5, second paragraph by deleting the words "on the basis of the member's failure to co-operate with the Law Society" so that the sentence would read:

"Failure to comply with the decision of the Complaints Resolution Commissioner will result in a referral to the Discipline process."

It was moved by Mr. McKinnon, seconded by Ms. Callwood that Recommendation 6 be amended by deleting the words "not be located within the present Law Society of Upper Canada premises" and the insertion of the words "be required to circuit within Ontario to deal with complaints coming to the Commissioner's attention" so that the sentence would now read:

"That the Complaints Resolution Commissioner be required to circuit within Ontario to deal with complaints coming to the Commission's attention."

Carried

It was moved by Mr. Strosberg, seconded by Mr. Lawrence that paragraph 2 on page 5 be further amended by the addition of the sentence "it would then be up to the Discipline process in the exercise of its jurisdiction to decide whether to take any further proceedings" so that the complete paragraph would now read:

"Failure to comply with the decision of the Complaints Resolution Commissioner will result in a referral to the Discipline process. It would then be up to the Discipline Committee in the exercise of its jurisdiction to decide whether to take any further proceedings."

Carried

The Report as amended was adopted on a vote of 16 to 6.

The following motions were also made during the course of the debate:

It was moved by Mr. Topp, seconded by Mr. Hickey that:

- (a) in the event that the Report be adopted by Convocation that a 12 month pilot project in a single judicial district be chosen by the Special Committee and confirmed by Convocation be instituted; and
- (b) that Convocation receive a Report of the Special Committee at the end of the pilot project and that no further action be taken until such time as Convocation had received the Report.

The motion was put after Convocation had voted to adopt the Report as amended and the motion was lost.

It was moved by Mr. Strosberg, seconded by Ms. Peters that all necessary steps be taken to institute for 1 year an alternate dispute mechanism for those matters which are not considered to merit discipline proceedings and that the Report be sent back to the Special Committee for further development in light of comments made in Convocation.

Not Put

It was moved by Ms. Chapnik, seconded by Ms. Kiteley that the Report be approved in principle and sent back to Committee for minor variations in light of the comments made in Convocation and that there be a 1 year implementation program.

Not Put

It was moved by Mr. Rock, seconded by Ms. Bellamy that Convocation has adopted the principle that the Law Society's Complaints Procedures must be changed at the earliest possible date in order to achieve the following objectives:

1. The recognition of a distinct category of complaints relating to matters of a minor nature - not appropriate for discipline - in which solicitors are alleged to have departed in their professional conduct from the appropriate standards of practice.
2. The early identification of such complaints and the preparation and adoption of procedures by which specially trained staff would seek to resolve them consensually, through fair and responsive means, but with the power, in the absence of agreement, to formulate a suggested disposition of the complaint.
3. The creation of the post of Complaints Resolution Commissioner to whom either the complainant or the solicitor may resort as of right, and in accordance with clear and fair procedures, in order to review both the merits of the complaint and the appropriateness of the suggested disposition.
4. Final decisions as to complaints and their disposition will be made by the Complaints Commissioner, and those decisions will be binding on both the complainant and the solicitor. If the decision of the Complaints Commissioner requires action on the part of the solicitor and is not complied with, staff will refer the matter to discipline. In such a case, the Complaint Authorization Committee will exercise its own judgment to determine whether, having regard to all the circumstances, a complaint should be issued against the solicitor.

Not Put

THE REPORT AS AMENDED WAS ADOPTED

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ADMISSIONS COMMITTEE

Mr. Strosberg presented the balance of the Report and Addendum of the Admissions Committee of its meeting on June 14th, 1990.

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 14th of June, 1990 at 9:30 a.m., the following members being present: Mrs. Weaver (Vice-Chair) and Messrs. Ground, Lamont and Strosberg.

A.  
POLICY

1. SPECIAL PETITION FOR TRANSFER UNDER REGULATION 4(1)

A letter was before the Committee from Brent A. Latimer dated the 5th of June, 1990. In his letter Mr. Latimer states that he was called to the Bar of the Province of Alberta in September 1981 where he practised as an employee of Esso Resources Canada Limited until August 1984. In September 1984, he began a two-year program at the Fletcher School of Law and Diplomacy, Tufts University in Massachusetts. From May to August 1985 he worked as an employee of Imperial Oil Limited in Toronto under the supervision of members of the Law Society of Upper Canada. In May 1986 he received the degree of Master of Arts in Law and Diplomacy. From May 1986 to October 1987 he worked for Imperial Oil but outside the practice of law. On the 19th of October, 1987 he returned to the active practice of law as a member of the Law Society of Alberta in the law department of Esso Resources Canada Limited.

On the 3rd July, 1990 he will be transferring to the law department of Imperial Oil Limited in Toronto. He says that he will be employed by Imperial as a member of its law department and will be practising strictly within the scope of his employment. His area of practice will principally relate to the interpretation of the Income Tax Act (Canada). He will also be providing advice on other areas of law based upon the laws of the Province of Alberta. Before being admitted himself, any advice on the laws of the Province of Ontario which he will offer will be provided under the supervision of Mr. Ronald C. Walker, Vice President General Counsel of Imperial Oil Limited and a member of the Law Society of Upper Canada.

When Mr. Latimer begins work with Imperial Oil in Toronto on the 3rd of July, 1990, he will be 3 months and 16 days short the required three years of practice within the last five years which would enable him to transfer through the Admissions Committee by sitting transfer examinations. He asks that the work he will be performing during the 3 months and 16 days leading up to October 19th, 1990 will be considered as satisfying the requirements under Regulation 4(1), that he be permitted to apply to the Admissions Committee following October 19th, 1990 and allowed to sit transfer examinations.

A letter dated the 5th of June, 1990 from Mr. Ronald C. Walker, was also before the Committee for consideration.

The Committee considered Mr. Latimer's position under Regulation 4(1) which provides that:

"Upon the recommendation of the Committee, an applicant may be called to the bar and admitted as a solicitor who,

- (a) has been engaged in the active practice of law in one or more common law provinces or territories of Canada for a period or periods totalling at least three years within the five year period immediately preceding his application;
- (b) files a certificate of good standing;
- (c) passes the prescribed examinations on the statutes of Ontario and procedure in Ontario; and
- (d) presents evidence of the time or times during which and the place or places where he has been engaged in the active practice of law."

On reviewing the wording of the regulation, the Committee is of the opinion that Mr. Latimer's practice in Ontario as an employee of Imperial Oil Limited can be taken as fulfilling the requirement of three years of practice in "one or more common law provinces or territories of Canada ...".

## 2. DIRECT TRANSFER - QUEBEC - SPECIAL PETITION

The following item was before the Admissions Committee when it met on the 10th of May, 1990:

"Daniel J. Paul (Civil Law degree 1981 from the University of Ottawa) was called to the Bar of the Province of Quebec in 1982 and practised in that province from the date of his call to the Quebec Bar until 1984. From 1984 to 1987 he practised law as Corporate Counsel with Canada Post Corporation in Ottawa. From 1987 to the present he has been practising law as Senior Corporate Counsel for Unisys Canada Inc., in Toronto.

In his letter dated the 5th of March, 1990, Mr. Paul states that although he has been actively practising law since 1982, the fact that he has practiced law in Toronto for the last three years may unjustly, from his perspective, preclude him from writing the transfer examinations in that the Regulation specifies that the necessary three years of active practice preceding the application to transfer must have taken place in the Province of Quebec.

The Committee reviewed the regulation and concluded that Mr. Paul could apply to transfer pursuant to regulation 4(1) rather than regulation 4(2). Mr. Paul has practised as a "corporate solicitor" in Ontario, a common law province, for three of the last five years. Accordingly, the Committee can grant him permission to transfer.

In using its discretion to recommend that Mr. Paul be permitted to proceed under section 4(1) determined that as he does not have an LL.B. degree but only an LL.L. degree that he be required to write and pass the Common Law examination before being eligible to write the transfer examinations on Statutes and Procedure in Ontario.

In reaching this decision, the Committee was cognizant that this was a reversal of its prior interpretation of the transfer regulation and in particular the reversal of a decision it reached in February 1990 that an applicant, in the same situation as Mr. Paul, be denied permission to transfer.

In light of the new interpretation arrived at by the Committee, Convocation is asked to grant Mrs. Lorraine Kuska, the applicant denied in February, permission to proceed on the same basis as Mr. Paul.

B.  
ADMINISTRATION

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

Darrell Allan Kreel (B.Comm. 1982 from the University of Manitoba and LL.B. 1986 from the University of Victoria) was called to the Bar of the Province of British Columbia on the 12th day of June, 1987 and has practised in that province from the 12th June, 1987 to the present. Darrell Allan Kreel presents a Certificate of Good Standing and seeks to proceed under Regulation 4(1). There is nothing unusual about his application.

Approved

Jonathan Barry Kroft (B.A. 1981 and LL.B. 1983 both from the University of Manitoba) was called to the Bar on the 28th day of June, 1984 and has practised in that province from the 28th of June, 1984 to the present. Jonathan Barry Kroft presents a Certificate of Good Standing and seeks to proceed under Regulation 4(1). There is nothing unusual about his application.

Approved

Paul Murray Anthony McKenzie (B.A. 1971 and LL.B. 1976 both from the University of Manitoba) was called to the Bar of the Province of Manitoba in June 1977 and practised in that province from June 1977 to December 1981. Since December 1981 the applicant has served in a legal capacity with the Federal Government in Ottawa. Paul Murray Anthony McKenzie presents a Certificate of Good Standing and seeks to proceed under Regulations 4(1) and 3(1). There is nothing unusual about his application.

Approved

Nora Wai-Yee Ng (LL.B. 1983 from the University of London, England and LL.M. 1984 from Yale University) was called to the Bar of the Province of Alberta on the 19th day of September, 1985 and practised in that province from the 1st October 1985 to the 13th of May 1987 (1 yr. & 6 1/2 mos.), and again from beginning of June 1987 to the end of July 1989 (2 yrs. & 2 mos.). Nora Wai-Yee Ng presents a Certificate of Good Standing and seeks to proceed under Regulation 4(1). There is nothing unusual about her application.

Approved

DIRECT TRANSFERS - QUEBEC - REGULATION 4(2)

Jeremy Barry (B.A. 1978 and LL.B. 1982 both from McGill University) was called to the Bar of the Province of Quebec on the 16th day of December, 1986 and has practised in that province from the 12th January, 1987 to the present. Jeremy Barry presents a Certificate of Good Standing, seeks to proceed under Regulation 4(2) and asks permission to be excused from writing the Common Law examination according to the interpretation of Regulation 4(2) as set out in the Memorandum to the Admissions Committee of September, 1983 which states: "Candidates qualified to proceed under Regulation 4(2) and who have obtained an approved LL.B. degree within the eight years preceding their application may be taken to have satisfied the requirements of subparagraph (d) which reads - passes a comprehensive examination on the common law of Ontario." There is nothing unusual about his application.

Approved

James Grant Cameron (LL.B. received on the 8th of June, 1982 [which is within the last 8 years as his application arrived at our offices on the 22nd of May, 1990] and B.C.L. 1984 both from McGill University) was called to the Bar of the Province of Nova Scotia on the 28th day of February, 1986 and then to the Bar of the Province of Quebec on the 24th day of November, 1986 where he has practised since the 25th of November, 1986. James Grant Cameron presents a Certificate of Good Standing, seeks to proceed under Regulation 4(2) and asks permission to be excused from writing the Common Law examination according to the interpretation of Regulation 4(2) as set out in the Memorandum to the Admissions Committee of September, 1983 which states: "Candidates qualified to proceed under Regulation 4(2) and who have obtained an approved LL.B. degree within the eight years preceding their application may be taken to have satisfied the requirements of subparagraph (d) which reads - passes a comprehensive examination on the common law of Ontario." There is nothing unusual about his application.

Approved

Rex Andrew Ford (LL.L. 1980 from the University of Montreal and LL.B. 1981 from Dalhousie University) was called to the Bar of the Province of Quebec on the 11th day of November, 1981 and has practised in that Province from the 19th November, 1981 to the present. Rex Andrew Ford presents a Certificate of Good Standing, seeks to proceed under Regulation 4(2) and asks permission to be excused from writing the Common Law examination on the basis of his common law related experience and that the Committee will see it as satisfying the interpretation of Regulation 4(2) as set out in the Memorandum to the Admissions Committee of September, 1983 which states: "Candidates qualified to proceed under Regulation 4(2) and who have obtained an approved LL.B. degree within the eight years preceding their application may be taken to have satisfied the requirements of subparagraph (d) which reads - passes a comprehensive examination on the common law in Ontario."

The Committee had before it an affidavit from Mr. Ford setting out the nature of his practice. The Committee is of the view that his practice as a solicitor with Martineau, Walker had a sufficient common law content that he need not write the Common Law examination.

Mitchell Marcus (B.A. 1981 and B.C.L. and LL.L. 1985 all from McGill University) was called to the Bar of the Province of Quebec on the 12th day of November, 1986 and has practised in that province from the 12th November, 1986 to the present. Mitchell Marcus presents a Certificate of Good Standing and seeks to proceed under Regulation 4(2). There is nothing unusual about his application.

Approved

Michael Nelson (LL.B. and B.C.L. [June 8th] 1982 both from McGill University) was called to the Bar of the Province of Quebec on the 26th day of December, 1983 and has practised in that province from the 7th of May, 1984 to the present. Michael Nelson presents a Certificate of Good Standing, seeks to proceed under Regulation 4(2) and asks permission to be excused from writing the Common Law examination according to the interpretation of Regulation 4(2) as set out in the Memorandum to the Admissions Committee of September, 1983 which states: "Candidates qualified to proceed under Regulation 4(2) and who have obtained an approved LL.B. degree within the eight years preceding their application may be taken to have satisfied the requirements of subparagraph (d) which reads - passes a comprehensive examination on the common law of Ontario." There is nothing unusual about his application.

Approved

Peter Villani (B.A. 1980, B.C.L. and LL.B. 1985 all from McGill University) was called to the Bar of the Province of Quebec on the 12th day of May, 1987, and has practised in that province from the 5th June, 1987 to the present. Peter Villani presents a Certificate of Good Standing, seeks to proceed under Regulation 4(2) and asks permission to be excused from writing the Common Law examination according to the interpretation of Regulation 4(2) as set out in the Memorandum to the Admissions Committee of September, 1983 which states: "Candidates qualified to proceed under Regulation 4(2) and who have obtained an approved LL.B. degree within the eight years preceding their application may be taken to have satisfied the requirements of subparagraph (d) which reads - passes a comprehensive examination on the common law of Ontario." There is nothing unusual about his application.

Approved

2. FULL-TIME MEMBERS OF FACULTIES OF APPROVED LAW SCHOOLS

The following member of an approved law faculty asks to be called to the Bar and admitted as a solicitor without examination under Regulation 5 respecting full-time members of approved law faculties in Ontario:

Ronald Joel Daniels  
Faculty of Law,  
University of Toronto

B.A. 1982 and LL.B. 1986 both  
from the University of The  
Toronto

Approved

4. OTHER ITEMS

Special Request for Admission

Patricia Dougherty MacGuigan (B.S. from the University of Oklahoma, J.D. from Oklahoma City University and LL.M. from the University of Virginia) is a Judge of the Oklahoma Court of Appeals. She asks to be admitted to the Ontario Bar on the basis of writing examinations in October 1990 in lieu of completing the teaching term and articling requirements of the Bar Admission Course. Judge MacGuigan's supporting material is attached. Judge MacGuigan has filed additional material with the Department of Legal Education including copies of four of her reported judgements and material which she filed with the Joint Committee on Accreditation.

Judge MacGuigan applied to both the Legal Education and Admissions Committees. She requested that the Admissions Committee give her approval to be called to the Bar of Ontario upon her successfully completing the transfer exams.

The Committee was aware that it was the recommendation of the Legal Education Committee that Judge MacGuigan be required to attend the teaching term of the Bar Admission Course but not be required to article.

Your Committee notes that Judge MacGuigan, because she is not a member of another Canadian Bar, is not eligible to write the transfer exams.

The Committee does agree, however, with the recommendation of the Legal Education Committee.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of June, 1990

"H. Strosberg"  
Chair

ADMISSIONS COMMITTEE - ADDENDUM - JUNE 22ND 1990

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

Glenn Read Anderson (B.Comm. 1982 and LL.B. 1985 both from Dalhousie University) was called to the Bar of the Province of Nova Scotia on the 8th day of August, 1986 and has practised in that province from the 9th August 1986 to the 14th February 1987 and from the 21st September 1987 to the present. Glenn Read Anderson presents a Certificate of Good Standing and seeks to proceed under Regulation 4(1). There is nothing unusual about his application.

Approved

2. ADMISSION OF STUDENTS-AT-LAW

Bar Admission Course

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

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

1180 Glenn Edward Joseph Sandberg LL.B. York/87

Approved

3. EXAMINATION RESULTS - BAR ADMISSION COURSE TRANSFER EXAMINATIONS  
SUPPLEMENTAL EXAMINATIONS

The results of the Bar Admission Course Supplemental Transfer Examinations held in June 1990 were before the Committee. Two transfer candidates and one requalification candidate sat the examinations at the offices of the Bar Admission Course.

The following candidates passed:

Charles Edmund Evans  
Bryan Daniel Anthony Manulak  
Kieran Finbarr Mulroy

Noted

5. REINSTATEMENT AFTER SUSPENSION

Charles Edmund Evans was called to the Bar on the 25th of June, 1959 and was suspended for non-payment of the Errors and Omissions Insurance levy on the 20th of June, 1975.

Mr. Evans has now successfully completed the Bar Admission Course Transfer Examinations, the examinations to be sat by those who have been suspended for five or more consecutive years.

In January 1989 the Finance Committee waived arrears of fees in Mr. Evans' particular case.

On condition that he now files all necessary documents with the Finance department, Mr. Evans asks to be reinstated as a member of the Law Society of Upper Canada.

Approved

6. REQUEST FOR READMISSION AFTER RESIGNATION UNDER NORMAL CIRCUMSTANCES

An application for readmission was before the Committee from Robert Kenneth Carleton. Mr. Carleton was called to the Bar of the Province of Ontario on the 7th day of April, 1961 and resigned his membership at his own request on the 6th of June, 1988.

The applicant is not in any arrears of fees and asks that upon filing all necessary documents with the Finance Department and paying the readmission fee in the amount of \$300.00 he be readmitted.

Approved

THE REPORT AND ADDENDUM WERE ADOPTED

.....

LIBRARIES AND REPORTING COMMITTEE

Mr. Murphy presented the Report of the Libraries and Reporting Committee of its meeting on June 14th, 1990.

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 14th of June, 1990 at 8:30 a.m., the following members being present: D. Murphy (Chair), R. Bragagnolo (Vice-Chair), D. Bellamy, G. Farquharson, G. Henderson, R. Lalande, D. O'Connor, D. Thoman and R. Topp. D. Crosbie, G. Howell, P. Bell and Fraser Mann also attended.

A.  

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POLICY

1. GREAT LIBRARY - LONG RANGE PLANNING REPORT

The Long-Range Planning Report on the Great Library was tabled at the March meeting of the Committee and parts of it were circulated for the April and May meetings for purposes of finalization of the Committee's budget estimates. The Chair of the Great Library Long-Range Planning Sub-Committee, Dennis O'Connor, presented the Report of the Sub-Committee. The Chief Librarian, Glen Howell, and the Chair, Dennis O'Connor answered questions concerning the Report.

RECOMMENDATION: Your Committee recommends that the Report of the Sub-Committee on Long-Range Planning be approved, subject to the understanding that Phases 2, 3 and 4 of the library automation portion of the Report are approved in principle but will be further reviewed by the Sub-Committee. Phases 2, 3 and 4 are also subject to budgetary approval.

B.  

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ADMINISTRATION

1. ANNUAL GRANTS TO COUNTY AND DISTRICT LAW ASSOCIATIONS

Annual Returns with 1989 financial statements of all the County Law Associations (except Parry Sound) were received by the Chief Librarian. The Committee was asked to approve grants of \$3,000 each (Cochrane at \$4,500) for all of the County Law Associations. The Chief Librarian will be meeting with the Parry Sound Law Association on Wednesday, June 27th, 1990.

RECOMMENDATION: Your Committee recommends that an annual grant be paid to all of the County and District Law Associations except Parry Sound.

2. GST AND COUNTY LAW ASSOCIATIONS

The Government of Canada announced that a simplified GST program would be applicable as an option for small businesses with revenue under \$30,000. The Chief Librarian advised the Committee of the information that he had received from the Accountants for the Society.

RECOMMENDATION: Your Committee recommends that the Chief Librarian advise the County and District Law Associations of the information received from the Accountants.

3. PHOTOCOPIERS - COUNTY LAW ASSOCIATIONS

Three county law associations are seeking special grants to cover the cost of new photocopiers, upon the expiry of leases on old run-down equipment:

|           |            |
|-----------|------------|
| Essex     | \$4,500.00 |
| Frontenac | \$4,300.00 |
| Renfrew   | \$4,222.00 |

A small reserve fund to cover such contingencies was authorized last summer by the Chair of the Committee, and is sufficient to handle the above allocation of funds (\$13,022.00).

The Chair has spoken with the Library Committee Chair for Essex, John Brockenshire, and the Chief Librarian has spoken with the executive officers of both Frontenac and Renfrew (as well as the Benchers from both areas, Michael Hickey and Netty Graham respectively).

RECOMMENDATION: Your Committee recommends that special grants to cover the cost of new photocopiers be paid in the following amounts to the following counties.

|           |            |
|-----------|------------|
| Essex     | \$4,500.00 |
| Frontenac | \$4,300.00 |
| Renfrew   | \$4,222.00 |

4. EMERGING POLICY ISSUES

The Secretary reported that the Chair of the Research and Planning Committee has sent a memorandum to the Chair of this Committee indicating the issues that the Committee will be discussing in the coming year. In the memorandum, Mr. Spence asks if there are any emerging policy issues that this Committee may refer to the Research and Planning Committee for discussion during the coming year. This matter was deferred until the next meeting.

5. ONTARIO REPORTS - LEGAL FEES - TENDERS

The Secretary reported that an account was received from our counsel for the period January 1st, 1990 to April 30th, 1990 relating to the tenders for the Ontario Reports Weekly Parts and the Data Base. It does not include any services relating to the tenders for the Ontario Reports on CD-ROMs. Your Committee approved the account of counsel for the Law Society. Mr. O'Connor declared his interest and refrained from voting.

C.  
INFORMATION

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1. BOOK LIST

The Great Library will be adding 60 new titles to its book collection for June, 1990.

2. FINANCIAL STATEMENT

The Financial Statement for the first eleven months ending May 31st, 1990 was received.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of June, 1990

"D. Murphy"  
Chair

THE REPORT WAS ADOPTED

.....

UNAUTHORIZED PRACTICE COMMITTEE

Mr. Ruby presented the Report of the Unauthorized Practice Committee of its meeting on June 14th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of June, 1990 at 10:30 a.m., the following members being present: Messrs. Ruby (Chair), McKinnon (Vice Chair), Ms. Callwood, Messrs. Cass, Farquharson, Lawrence, Shaffer and Ms. Weaver. Also in attendance was: Ms. Carlyle (Secretary).

B.  
ADMINISTRATION

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1. ACCOUNTS

Accounts of counsel and investigators were approved in the total amount of \$9,229.93.

2. INVESTIGATIONS

The Society does not have sufficient evidence in certain cases to commence prosecutions. The Committee authorized a request to the Treasurer for the use of investigators who will not disclose that they are from the Law Society and to authorize the commencement of prosecutions when the necessary evidence is obtained.

3. APPLICATION FOR LETTERS PATENT - WATERLOO LAW ASSOCIATION

Your Committee received an application from the Waterloo Law Association for Letters Patent. Your Committee reviewed this application and determined it had no objections to same.

4. ALTERNATIVE DISPUTE RESOLUTION

The Chairs of all Standing Committees have received a memorandum from James M. Spence. Your Committee is asked:

- 1) For its comments upon the issues identified within the memorandum; and
- 2) your suggestions as to other issues that might appropriately be considered by the Law Society in relation to Alternate Dispute Resolution.

Your Committee reports that it would not want to restrict tribunal members to lawyers, but expressed the view that the public ought to be made clearly aware of the participation of any non-lawyers in order to prevent misconception and misunderstanding. Your Committee reports that for its members the most difficult issue is the qualifications expected or required of those persons making appearances before the tribunals or giving advice to participants. Your Committee therefore feels that it cannot offer an opinion without much further study, preferably with the assistance of experienced individuals. Your Committee further notes that if the Sub-Committee can define the types of tribunals to be involved in Alternative Dispute Resolution, then it could offer more assistance.

5. RESEARCH AND PLANNING COMMITTEE

The Chairs of all Standing and Special Committees have received a memorandum from James M. Spence. Your Committee considered this

memorandum and agrees that there are "emerging policy issues that should be considered by the Research and Planning Committee", but has no new issues to offer at this time.

Approved

ALL OF WHICH is respectfully submitted

DATED this 22nd, day of June, 1990

"C. Ruby"  
Chair

| <u>Prosecutions</u>   | <u>Next Court Date</u>   |
|---|--|
| Natalie MacPhee<br>(Paralegal Consultants Inc.)<br>(Ottawa) | Pending application to Supreme Court<br>Courtroom 5<br>Sault Ste. Marie<br>To set a date |
| John Galbreath<br>(Ottawa)                                  | Pending application to Supreme Court<br>Courtroom 5<br>Sault Ste. Marie<br>To set a date |
| Natalie MacPhee<br>(Paralegal Consultants)<br>(Ottawa)      | May 29, 1990 at 10:00 a.m.<br>Courtroom 7<br>Trial                                       |
| Paralegal Consultants<br>(Ottawa)                           | May 29, 1990 at 10:00 a.m.<br>Courtroom 7<br>Trial                                       |
| Julian T. Shumka<br>(Paralegal Associates)<br>(Kitchener)   | May 30, 1990 at 9:00 a.m.<br>Courtroom 5<br>To be spoken to                              |

|   |   |
|---|---|
| 834259 Ontario Inc.<br>(Paralegal Associates)<br>(Kitchener)                                  | May 30, 1990 at 9:00 a.m.<br>Courtroom 5<br>To be spoken to                           |
| Susan Merchant<br>(Paralegal Associates)<br>(Ottawa)  | June 7 & 8, 1990 at 9:00 a.m.<br>Courtroom 3<br>To set a date for pre-trial           |
| Paralegal Associates Inc.<br>c.o.b. "Paralegal Associates"<br>(Mississauga)                   | June 13, 1990 at 9:00 a.m.<br>Courtroom 2 - St. Catharines<br>To confirm date         |
| Randy Mitter<br>(Paralegal Associates Inc.<br>c.o.b. "Paralegal Associates")<br>Mississauga)  | June 13, 1990 at 9:00 a.m.<br>Courtroom 2 - St. Catharines<br>To confirm date         |
| Heather Daer<br>(Paralegal Associates Inc.<br>c.o.b. "Paralegal Associates")<br>(Mississauga) | June 13, 1990 at 9:00 a.m.<br>Courtroom 2 - St. Catharines<br>To confirm date         |
| Jane Baker<br>Ontario Paralegal<br>(Chatham)  | June 14, 1990 at 10:00 a.m.<br>Courtroom 3<br>Plea & Trial                            |
| Fred C. May<br>(Pennywise Paralegal)<br>(Pickering)   | June 15, 1990 at 9:30 a.m.<br>Courtroom 3<br>To be spoken to                          |
| Peggy Wilson<br>Divorce Easy<br>(London)  | June 18, 1990 at 10:00 a.m.<br>Courtroom 2<br>Trial                                   |
| Norine Earl<br>(Toronto Divorce Services)<br>(Toronto)  | June 25, 26, 27, 1990 at 9:00 a.m.<br>Old City Hall Courtroom 111<br>Trial            |
| Fred May<br>(Paralegal Associates)<br>(Downsview)   | June 28 & 29, 1990 at 10:00 a.m.<br>Courtroom 306<br>Trial                            |
| Personal Paralegal<br>(Toronto)   | July 3, 1990 at 10:00 a.m.<br>Courtroom 140<br>Trial                                  |
| Christian Vadum<br>(Personal Paralegal)<br>(Toronto)  | July 3, 1990 at 10:00 a.m.<br>Courtroom 140<br>Trial                                  |
| Dale Hoskin<br>(Timmins)  | July 6, 1990 at 9:30 a.m.<br>Courtroom 1<br>Trial                                     |
| Richard J. Gordon<br>(Paralegal Associates)<br>(Burlington)                                   | July 24, 1990 at 9:00 a.m.<br>Courtroom 2<br>Trial                                    |
| David Nancoff<br>(Ontario Paralegal)<br>(Toronto)   | July 30-August 4, 1990 at 10:00 a.m.<br>Ottawa Prov. Court<br>Trial Continuation      |
| Ontario Paralegal Ltd.<br>(Toronto)   | July 30-August 4, 1990 at 10:00 a.m.<br>Ottawa Provincial Court<br>Trial Continuation |

|   |   |
|---|---|
| 696631 Ontario Ltd.<br>(Stephen Kuz)<br>(Etobicoke)                         | August 8, 1990 at 10:00 a.m.<br>Courtroom 203<br>Trial                            |
| Shelley Hisey<br>(Paralegal Associates)<br>(Orillia)                        | August 23, 1990 at 10:00 a.m.<br>Courtroom<br>Trial                               |
| Natalie MacPhee<br>(Ottawa)   | Sept. 17, 1990 at 10:00 a.m.<br>Courtroom 140<br>Old City Hall<br>To be spoken to |
| John Galbreath<br>(Ottawa)  | Sept. 17, 1990 at 10:00 a.m.<br>Courtroom 140<br>Old City Hall<br>To be spoken to |
| Dorothy Thiry<br>Divorce Aid<br>(London)                                    | Sept. 24, 1990 at 10:00 a.m.<br>Courtroom 3<br>Trial                              |
| Frank Sysel<br>(Paralegal Associates)<br>(Chatham)                          | October 12, 1990 at 10:00 a.m.<br>Courtroom 2<br>Trial                            |
| Richard Perry<br>(Regional Paralegal)<br>(Hamilton)                         | October 24, 1990 at 10:00 a.m.<br>140 Hunter St. Hamilton<br>To set a date        |
| Marc Monson<br>(Action Paralegal)<br>(Downsview)                            | November 27, 1990 at 10:00 a.m.<br>Courtroom 305<br>Trial                         |
| 786301 Ontario Ltd.<br>(Action Paralegal)<br>(Downsview)                    | November 27, 1990 at 10:00 a.m.<br>Courtroom 305<br>Trial                         |
| Paralegal Associates Inc.<br>c.o.b. "Paralegal Associates"<br>(Mississauga) | Jan. 7,8,9, 1991 at 9:00 a.m.<br>Courtroom 2 (St. Catharines)<br>Trial            |
| Randy Mitter<br>(Paralegal Associates Inc.)<br>(Mississauga)                | Jan. 7,8,9, 1991 at 9:00 a.m.<br>Courtroom 2 (St. Catharines)<br>Trial            |
| Heather Daer<br>(Paralegal Associates Inc.)<br>(Mississauga)                | Jan. 7,8,9, 1991 at 9:00 a.m.<br>Courtroom 2 (St. Catharines)<br>Trial            |
| Andrew Czornyj<br>(Jacobi & Myers)<br>(Toronto)                             | May 20, 1991 at 10:30 a.m.<br>Courtroom 1-Brampton Prov. Court<br>To set a date   |
| Douglas Traill<br>(Jacobi & Myers)<br>(Toronto)                             | May 20, 1991 at 10:30 a.m.<br>Courtroom 1-Brampton Prov. Court<br>To set a date   |
| Jacobi & Myers<br>(Toronto)   | May 20, 1991 at 10:30 a.m.<br>Courtroom 1-Brampton Prov. Court<br>To set a date   |

THE REPORT WAS ADOPTED

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LEGAL AID COMMITTEE

Mr. Bastedo presented the Report of the Legal Aid Committee of its meeting on June 14th, 1990.

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 14th of June, 1990, the following members being present: Thomas G. Bastedo (Chair), Messrs. Ally, Bond, Ms. Campbell, Ms. Callwood, Ms. Curtis, Mr. Durno, Ms. Kehoe, Ms. Kiteley, Messrs. Koenig, Lalande, Spence and Ms. Tsao.

A.  
POLICY

B.  
ADMINISTRATION

1.(a) REPORT OF THE DEPUTY DIRECTOR, FINANCE  
FOR THE ONE MONTH ENDED APRIL 30, 1990

Finance

The Director's report pursuant to Section 88(2) of the Regulation for the one month ended April 30, 1990 takes the form of the following financial statement:

Ontario Legal Aid Plan  
Statement of Income and Expenditures  
One Month Ended April 30, 1990 (\$000)

|                         | <u>Actual</u><br><u>1989/90</u> | <u>Budget</u><br><u>1990/91</u> | <u>Actual</u><br><u>1990/91</u> | <u>Variance</u> |
|-------------------------|---------------------------------|---------------------------------|---------------------------------|-----------------|
| <u>Opening Balance</u>  | 369.8                           | 6,925.8                         | 6,925.8                         |                 |
| <u>Income</u>           |                                 |                                 |                                 |                 |
| Treasurer of Ontario    | 11,014.0                        | 12,577.7                        | 12,577.7                        |                 |
| Northern Legal Services |                                 |                                 |                                 |                 |
| Family Violence Grant   | 25.0                            | 25.0                            | 25.0                            |                 |
| Refugee Claimant Grant  |                                 |                                 |                                 |                 |
| Law Foundation          |                                 |                                 |                                 |                 |
| Client Contribution     | 610.2                           | 663.3                           | 663.3                           |                 |
| Client Recoveries       | 99.7                            | 102.4                           | 102.4                           |                 |
| Research Sales          | 4.0                             | 12.1                            | 12.1                            |                 |
| The Law Society         |                                 |                                 |                                 |                 |
| Miscellaneous           | <u>94.1</u>                     | <u>374.5</u>                    | <u>374.5</u>                    |                 |
|                         | <u>12,216.8</u>                 | <u>20,680.8</u>                 | <u>20,680.8</u>                 |                 |
| <u>Expenditure</u>      |                                 |                                 |                                 |                 |
| Certificate Accounts    | 2,086.7                         | 825.3                           | 825.3                           |                 |
| Refugee Accounts        | 21.8                            | 24.6                            | 24.6                            |                 |
| Duty Counsel Fees       |                                 |                                 |                                 |                 |
| & Disbursements         | 260.4                           | 185.8                           | 185.8                           |                 |
| Salaried Duty Counsel   | 53.2                            | 85.2                            | 85.2                            |                 |
| Northern Legal Services | -                               | 225.0                           | 225.0                           |                 |
| Community Clinics       | 1,747.0                         | 1,887.2                         | 1,887.2                         |                 |
| Student Legal Aid       |                                 |                                 |                                 |                 |
| Societies               | 450.0                           | 1,334.5                         | 1,334.5                         |                 |

|                          |                |                 |                 |
|--------------------------|----------------|-----------------|-----------------|
| Research Facility        | 93.9           | 97.7            | 97.7            |
| Area Office Admin.       | 635.6          | 662.5           | 662.5           |
| Provincial Office Admin. | 399.4          | 493.7           | 493.7           |
| Refugee Admin.           | 3.4            | 19.2            | 19.2            |
|                          | <u>5,751.4</u> | <u>5,840.7</u>  | <u>5,840.7</u>  |
| <u>Closing Balance</u>   | <u>6,465.4</u> | <u>14,840.1</u> | <u>14,840.1</u> |

Statistics

The following table compares reported activity for the one month ended April 30, 1990 with activity for the previous fiscal year:

|                                      | <u>April 30</u><br><u>1990</u> | <u>April 30</u><br><u>1989</u> | <u>%Change</u><br><u>from Prev. Year</u> |
|--------------------------------------|--------------------------------|--------------------------------|--|
| Summary Legal Advice                 | 4,777                          | 4,222                          | 13.1                                     |
| Referrals to Other Agencies          | 9,584                          | 7,679                          | 24.8                                     |
| Applications for Certificates        | 12,608                         | 12,154                         | 3.7                                      |
| Refusals                             | 2,590                          | 2,713                          | (4.5)                                    |
| As a Percentage of Applications      | 20.5%                          | 22.3%                          |  |
| Certificates Issued                  | 10,017                         | 9,443                          | 6.1                                      |
| Persons Assisted by<br>Duty Counsel: |                                |                                |  |
| Fee for Services                     | 6,287                          | 7,345                          | (14.4)                                   |
| Salaried                             | 6,434                          | 6,088                          | 5.7                                      |

2. REPORT ON THE PAYMENT OF SOLICITORS  
ACCOUNTS FOR THE MONTH OF MAY, 1990

The Legal Aid Committee reviewed the Report on the Payment of Solicitors Accounts for the month of May, 1990 which is attached hereto as SCHEDULE (A).

3. REPORT ON THE STATUS OF REVIEWS IN  
THE LEGAL ACCOUNTS DEPARTMENT, MAY 30, 1990

The Legal Aid Committee reviewed the Report on the Status of Reviews in the Legal Accounts Department, May 30, 1990 which is attached hereto as SCHEDULE (B).

ALL OF WHICH is respectfully submitted

"T. Bastedo"  
Thomas G. Bastedo  
Chair

June 14, 1990

Attached to the original Report in Convocation File, copy of:

B-Item 2 - Report on Final Accounts Paid Month of May, 1990.  
(Schedule A)

B-Item 3 - Legal Accounts Department Monthly Report May 30th, 1990.  
(Schedule B)

THE REPORT WAS ADOPTED

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BUILDING COMMITTEE

Mr. Lamont presented the Report of the Building Committee dated June 22nd, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The BUILDING COMMITTEE begs leave to report:

B.  
ADMINISTRATION

1. Repair to roof over Benchers' Wing

The attached report from the Under Treasurer was distributed to the members of the Building Committee and has been approved. It should be noted that due to the uncertainty of the extent of the repairs necessary, the cost can only be grossly estimated at between \$200,000 and \$500,000. A more precise figure will be available before proceeding with the work.

As it may be necessary to proceed with this work prior to the September Convocation, it is recommended that a committee consisting of the Treasurer, the Chair of Finance and the Chair of the Building Committee be authorized by Convocation to approve contracts and expenditures necessary for the timely repair of the roof over the Benchers' Wing including the internal structural repair and the external stone and plaster work.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of June, 1990

"D. Lamont"  
Chair

Attached to the original Report in Convocation File, copy of:

B-Item 1 - Memorandum from Mr. Donald Crosbie to the Building Committee dated June 18, 1990 re: Repair to Roof over Benchers' Wing. (Pages 1 to 2)

THE REPORT WAS ADOPTED

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CERTIFICATION BOARD

Mr. Rock presented the Report of the Certification Board of its meetings on March 27th, April 18th and May 29th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The CERTIFICATION BOARD begs leave to report:

Your Board met on Tuesday, the 27th of March, 1990 at three thirty in the afternoon, the following members being present: A.M. Rock (Chair), G.P. Sadvari (Vice-Chair), J. Callwood and M.L. Pilkington. The following Specialty Committee members attended the meeting: R.E. Mesbur (Family Law) and R.E. Dimock (Chair - Intellectual Property Law). S. Thomson (Co-ordinator) and M. Newman (of Advance Planning and Communications) were also present.

Your Board met on Wednesday, the 18th of April, 1990 at four thirty in the afternoon, the following members being present: A.M. Rock (Chair), J. Callwood and P.G. Furlong. The following Specialty Committee members attended the meeting: R.E. Dimock (Chair - Intellectual Property Law) and J.R. Manishen (Criminal Litigation). R.F. Tinsley and S. Thomson of the Law Society were also present.

Your Board met on Tuesday, the 29th of May, 1990 at three o'clock in the afternoon, the following members being present: G.P. Sadvari (Vice-Chair), J. Callwood, P.G. Furlong, M.L. Pilkington, L.M. Shore and R.D. Yachetti. The following Specialty Committee member attended the meeting: P. Webb (Chair - Civil Litigation). S. Thomson and S. Hasham from the Law Society were also present.

Specialty Committees met as follows:

The Civil Litigation Specialty Committee met on Wednesday, the 28th of March, 1990 at four o'clock in the afternoon.

The Criminal Litigation Specialty Committee met on Friday, the 30th of March, 1990 at one o'clock in the afternoon.

The Civil Litigation Specialty Committee met on Wednesday, the 2nd of May, 1990 at four thirty in the afternoon.

The Intellectual Property Law Specialty Committee met on Wednesday, the 23rd of May, 1990 at four o'clock in the afternoon.

The first Interview Training Workshop for Specialists was conducted at Ryerson Polytechnical Institute in Toronto on Saturday, the 9th of June, 1990 from nine o'clock in the morning until one o'clock in the afternoon.

A.

POLICY

1. FRENCH LANGUAGE POLICY

(a) The Board recommends that the following French-language versions of the manner by which certified Specialists may presently identify themselves be adopted:

"Accredite(e) par la Societe du barreau du Haut-Canada  
a titre de specialiste ...

- either en litige civil"
- or en litige criminel"
- or en litige civil et criminel"
- or dans le droit de la famille"

(b) The Board recommends that an attempt should be made to include French-speaking members on Certification Program Committees where possible.

(c) The Board recommends that a French-language component of the Certification Program should be implemented in due course, whereby all Certification Program materials, including application forms, will be available to members in both French and English, where an applicant may choose to communicate with the office and be interviewed in the French language, and where the successful applicant may choose to receive a French-language certificate.

2. ADVERTISING

At the present time, the manner by which a Specialist may identify the designation in any written material, including letterhead and professional cards, is restricted to: "Certified by the Law Society as a Specialist in [area of law]".

The Board recommends that Specialists be advised as follows:

"When using the designation outside Ontario, or in cases where there is any possibility that the designation, without identifying the certifying body, may be misleading, the more complete wording "Certified by the Law Society of Upper Canada as a Specialist in [area of law]" is required."

B.  

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ADMINISTRATION

1. ASSESSMENT OF DUAL CIVIL/CRIMINAL LITIGATION APPLICANTS

Although a Civil and Criminal Litigation Specialty Committee was struck in the summer of 1989, this committee has never been formed. The civil portions of dual applications are being assessed by the Civil Litigation Specialty Committee. Likewise, the criminal portions of dual applications are being assessed separately by the Criminal Litigation Specialty Committee. This means that the applicant is sometimes being certified in one of the two areas of law while awaiting consideration of the other.

The Board recommends that representatives from each of the Civil Litigation Specialty Committee and the Criminal Litigation Specialty Committee be called upon on an ad hoc basis by the Chairs of those Committees to meet and review dual specialty applications.

C.  

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INFORMATION

1. CERTIFICATION OF CRIMINAL LITIGATION SPECIALISTS

The Board is pleased to report the certification of the following lawyers as Specialists in Criminal Litigation:

P. Berk Keaney (of Sudbury)  
Michael J. Neville (of Ottawa)  
David F. Smye (of Hamilton)

2. DUAL CIVIL/CRIMINAL SPECIALTY

Paragraph 7. of the Civil/Criminal Litigation Standards, which particularly addresses the dual specialty but which had not stated the balance of time (totalling 90% in both areas) required in each area, was amended at the Certification Board's meeting of March 27/90 to read [amended section is in boldface]:

D. Where applicants seek certification as Specialists in civil and criminal litigation, they must satisfy the Civil and Criminal Litigation Specialty Committee and the Board that they have sufficient experience in both civil and criminal litigation to warrant the dual certification. The Specialty Committee and the Board will consider the extent to which applicants have satisfied the criteria set forth above for both areas. Generally speaking, applicants seeking dual certification will be required to demonstrate that 90% of their practice is devoted to civil and criminal litigation and that the percentage of their practice devoted to each is sufficient to develop the expertise required for certification in each of those fields separately.

3. INTERVIEW TRAINING WORKSHOP

The process of interviewing applicants for certification is taking on increasing significance, particularly since the Board's decision late last year that all applicants be interviewed as a general rule. The Certification Board is anxious to ensure that, to the extent possible, interviews are conducted on a uniform basis and that the results of the interviews are communicated to the relevant Specialty Committee in a comprehensive and effective way.

With all of that in mind, the Board presented, with the assistance of Advance Planning and Communications Limited (of Toronto) in conjunction with Barry McLoughlin Associates Inc. (an Ottawa-based consulting firm specializing in executive training), a four-hour workshop on Saturday, June 9, 1990 at which materials were distributed, presentations were delivered, and mock interviews were conducted for the purpose of establishing standard procedures and approaches during interviews.

In selecting participants for the first workshop on June 9th, a particular effort was made to include Specialists from as wide a range of geographic regions as possible, as well as to include Specialists who had already been involved in interviews and who would be able to make recommendations based on personal experience.

Because of the very significant numbers of Specialists who expressed an interest in attending the workshop, the Board has decided to conduct a number of such programs, both in Toronto and around the Province, during the coming twelve months. The Board has also decided to limit the enrollment in each of the seminars to fifty persons, in order to ensure that the working groups will not be so large that discussion becomes difficult.

The entire workshop, including one of the mock interview sessions, moderated by Barry McLoughlin, was videotaped by Stonehenge Filmworks Inc. Portions of the master tape will be incorporated in two half-hour training tapes, which are to be used at subsequent workshops and as a standard educational tool for the Certification Program.

Attached as Appendix "A" is an Interviewer's Guide, which was prepared for the workshop and which will be revised as the interviewing process becomes increasingly standardized.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of June, 1990

"A. Rock"  
Chair

Attached to the original Report in Convocation File, copy of:

C-Item 3 - Interviewer's Guide (June 1990) Law Society's Certification Program. (Appendix "A" Pages 1 to 26)

THE REPORT WAS ADOPTED

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SPECIAL COMMITTEE ON OSC PROPOSAL TO DISCIPLINE PROFESSIONALS

Mr. Ground presented the Report of the Special Committee on OSC Proposal to Discipline Professionals of its meeting on June 15th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE SPECIAL COMMITTEE ON OSC PROPOSAL TO DISCIPLINE PROFESSIONALS  
begs leave to report:

Your Committee met on Friday, the 15th of June, 1990 at twelve o'clock in the afternoon, the following members being present: Messrs. Ground (Chair), Carter, Spence, and Thom. Also present were the Treasurer, the Under Treasurer, the Secretary, the Research Director, the summer law student and the Senior Counsel - Professional Conduct.

1. HISTORY

The Special Committee was appointed because of the concerns of the legal profession with respect to the proposed amendments to the Ontario Securities Act which, if implemented, would subject lawyers to disciplinary action by the Ontario Securities Commission.

Convocation in March approved the contents of a submission to the Commission. A copy of this submission is attached.

The Treasurer and the Chair of the Special Committee met with the Chair and the Executive Director of the Commission on April 9, 1990 to present the Society's submission. Members of the Special Committee met with the Chair and officials of the Commission on June 8, 1990 to address the issues contained in the Society's submission, particularly in regard to the more effective serving of the public interest.

In this and other discussions, the Commission has sought to uphold its responsibilities to protect the interest of the public. The Society considers this responsibility to be of the highest importance. It recognizes as well that the Commission's proposals have been put forward in a serious, thoughtful and responsible effort to come to grips with matters which the Commission's staff perceives to be real difficulties in the administration of securities law.

The Society wishes to point out, however, that it too has major responsibilities in relation to the public interest. In particular, the Society is keenly aware of the duty of a lawyer to members of the public, all the more so in matters involving securities law. This duty is recognized in our Rules of Professional Conduct, both generally in Rule 1 and more specifically in Rule 11, where Commentary 1 in particular stresses that a lawyer has a duty "not [to] subvert the law by counselling or assisting in activities which are in defiance of it". Consequently, the Society shares the Commission's concern that a lawyer practicing in the securities field in either a dishonest or incompetent fashion should be disciplined, and, where appropriate, have his or her rights to practise in this field restricted.

2. THE OSC PROPOSAL

In consideration of its role in protecting the public, the Society remains of the opinion, however, that the proposal put forward by the Commission, while laudable in its intent, is fraught with serious difficulties regarding the scope of the involvement of the Commission in disciplining lawyers.

Of foremost concern to the Society is the fact that, under the proposed regime, the actions of a lawyer which would trigger disciplinary action are defined no more precisely than as "misconduct in the marketplace". This is an unsatisfactorily broad concept. The Society understands the principal concerns of the Commission which underlie this term to be dishonesty, improper advice and negligence, but is itself concerned that each of these terms has a disturbing degree of vagueness about it. A Commission staff member may, for example,

perceive conduct to be "dishonest" in the sense that it manifests bad faith when, from the point of view of the lawyer involved, a judgment was made in good faith as to information that was material and required to be disclosed. Advice given by a lawyer might be perceived by staff to be a conscious and deliberate effort to counsel evasion of the Act or an abusive transaction under the Act when, in the diligent and good faith judgment of the lawyer involved, advice was intended to assist the client in achieving a structuring of the transaction that was proper and consistent with the requirements of the Act. The Society must take exception to a state of affairs in which a lawyer is exposed to liability because of a legitimate difference of opinion with the Commission staff.

This situation becomes all the more serious when the spectrum of penalties advanced in the Commission's proposal is taken into consideration. The suggested range is astonishingly broad. In principle, minor negligence or the result of a legitimate difference of opinion with the staff could lead to an injunction which could be very broad in its terms and lengthy in its duration, effectively precluding a lawyer from a significant part of his or her practice. The fact that such serious penalties could be inflicted upon a lawyer by the very tribunal before which he or she appears is bound to act as an in terrorem constraint on professional practice, and strikes at the very heart of the right of a client to fearless representation by counsel.

Finally, further considerations arise insofar as the concept of negligence is concerned. It is not clear that the question of negligence has been fully analyzed in the context of the existing law of negligence and the responsibilities of lawyers to their clients and others who may rely on the lawyer's advice. The Society is of the opinion that existing remedies at law and proposed remedies such as class actions provide a sufficient degree of protection with respect to the public interest.

### 3. THE PRESENT DISCIPLINARY SYSTEM

Coexisting with the interests of the investing public in being protected from dishonest or incompetent lawyers working in the securities field is the right of members of the public to competent, fearless representation by counsel. Any system of regulation of the conduct of lawyers must be such as to advance these twin goals, collective and individual in nature.

For many years, the Law Society has striven to reconcile these two objectives in a workable regulatory system. In doing so, it has recognized that (to quote again from Rule 11, Commentary 1) "the lawyer's responsibilities are greater than those of a private citizen". In practice, this means that, in addition to the laws imposed upon the lawyer as citizen and the rules governing the daily functioning of the securities field, the Society requires high standards of professional and ethical conduct of its members.

These standards have evolved over years of use and are codified in the Rules of Professional Conduct, which every lawyer must know and follow. These Rules include time-honoured general principles of proper professional conduct which are supplemented by detailed commentaries affording flexibility to these principles. In addition, a growing body of precedents serves to illustrate exactly what behaviour will be tolerated by the Society, and what will not. This system provides, in the Society's view, more than adequate safeguards to the investing public while at the same time permitting the honest and competent lawyer to represent his or her client with the confidence born of certainty of the rules he or she must obey.

In view of the Society's responsibilities, it wishes to cooperate with the Commission in seeking fair and effective means of dealing with the problems which have been identified by the Commission staff in the proposals. In particular, concerns have been raised as to whether the Society is in a position to act in a timely fashion in respect of misconduct by lawyers in the securities field. In response, it should be noted that the Society is presently engaged in two securities-related complaints and is proceeding in an expeditious manner; its files indicate that the Society has not in the past received any other complaints from the Commission. Its discipline process regularly deals with complicated and sophisticated matters, the recent "trust companies affair" being a case in point. Its procedures allow it to initiate complaints expeditiously and to bring any lawyer before the Society promptly. Finally, in appropriate circumstances, the Society retains outside counsel where necessary for the benefit of their special expertise.

Consequently, while the Society understands the Commission staff's concern about the need to deal quickly with misconduct matters so as to avoid repetition of harmful conduct, it must emphasize the point that any proceedings that are to be initiated must be conducted on a responsible and fair basis. Inevitably, such proceedings will require some time for their proper initiation and prosecution, whether those proceedings are begun under the aegis of the Commission or of the Society. The Society is of the opinion that the discipline system now in place is best suited to protect the collective public through the vigorous and expeditious prosecution of misconduct while at the same time, providing lawyers with clear standards to which they must adhere and allowing them to represent their individual clients fearlessly and properly.

#### 4. PROPOSED REFORMS

This is not to say, however, that the concerns raised by the Commission are not important or worthy of consideration; indeed, the addressing of these concerns affords the Society an opportunity, with the guidance of the Commission, to improve what the Society regards as an already effective system. Certain administrative reforms aimed at strengthening the Law Society's disciplinary procedures would go far towards providing an effective and efficient, yet just and fair, system to protect all members of the public where such protection is required.

Foremost among these reforms must be the granting to the Society of the power to suspend a member on an interim basis. At present, although the Society's Discipline staff can and does move very quickly to investigate and assess any matter involving the alleged misconduct of any lawyer, legitimate concerns have been raised about the possible delay between the laying of a formal Complaint and a final and binding determination of the matter by Convocation. During this period, a dishonest or incompetent lawyer may engage in conduct harmful to members of the public before Convocation makes its definitive judgment. An amendment to the Law Society Act granting the Society the power to suspend a member in this interim period would serve to protect the public, while employing the potent yet clear and fair disciplinary system already in place.

Secondly, when it becomes necessary to take corrective action involving the lawyer's firm, the Society should have the unambiguous power to summon the management or other committee responsible for the firm's day-to-day operations to appear before it. This would allow the Discipline Committee to determine whether internal procedures germane to the firm are the source of the danger to the public -- and, where necessary, to require an undertaking by the firm to correct the situation with or without outside assistance -- while at the same time avoiding the gross injustices of innuendo and guilt-by-association which might otherwise be inflicted upon an innocent firm by an imprecise reaction to the conduct of one dishonest or negligent lawyer.

Thirdly, the Society recognizes that the securities field is an increasingly specialized one, and welcomes any opportunity to hone its procedures to be able to deal more precisely with securities law's myriad complexities. In this regard, the Society would be pleased to cooperate with the Commission in developing further Rules of Professional Conduct or amplifying the Commentaries to these Rules to make it clear that negligent actions, even where isolated, which result in material harm to the public who rely upon the solicitor in question constitute misconduct for which disciplinary proceedings may be taken. Finally, the work of the Discipline Committee can be made both easier and more precise by the retention of a lawyer with expertise in the securities field -- perhaps a member of the Commission staff -- to aid the Committee in understanding the specialized context in which it must operate. The combination of speed, effectiveness and fairness which would result from such amendments would be hard to match in any alternative proposal.

#### 5. ALTERNATIVE PROPOSALS

Because the Society is sensitive to the apparent preference in the proposals presented to it for a disciplinary regime administered within the Commission, the Society has considered whether such a regime could be developed and administered on a basis that would provide the same protections and yield the same degree of fairness as the cooperative proposals, described above.

One alternative model in particular was considered under which the Commission would undertake disciplinary jurisdiction in respect of professionals. The scope of the conduct that would be subject to discipline would be strictly defined and would not be as broad as "misconduct in the marketplace". The definition would make it clear that diligent and good faith conduct is excluded from the scope of the discipline jurisdiction even where that conduct might yield a result which in the view of securities administrators is unsatisfactory in policy terms, although not a contravention of the Act or Regulations. Charges of misconduct would not be initiated until the request by the staff for such charges was reviewed and approved by a panel of three persons, two of whom might be members of the Commission and a third person designated by the Law Society or other appropriate professional governing body and acceptable to the Commission. No interim orders could be made without the approval of this panel. While this alternative model would be an improvement over the Commission's proposals, it would not afford as good a level of safeguards and protections as the cooperative proposal outlined above. In particular, both the definition of misconduct and the application of the standard in any particular case would still be left largely to the securities administrators, whose role would be complicated by their other objectives in respect of securities regulation.

The problems that caused the Society to reject this alternative proposal are for the most part inherent in any scheme which seeks to depart from the present disciplining system. While it does not tax the imagination to devise a fast and efficient procedure for removing lawyers accused of misconduct from the theatre of their alleged misdeeds, it is something else again to construct a system which provides the requisite level of procedural fairness demanded by contemporary administrative law. As a beginning, such an alternative regime for the disciplining of lawyers would have to afford a practitioner ironclad guarantees of fair and consistent procedures, including but not restricted to the right to a full hearing and strict rules governing that hearing. In addition, the source of any jurisdiction over lawyers practising in the securities field, "misconduct in the marketplace", would have to be defined, so that a lawyer could be certain as to whether his or her conduct contravened this rather ephemeral standard. Anything less invites uncertainty and timidity in the practice of securities law, to the prejudice of lawyer and client alike. And even with such guarantees embedded in an alternative disciplinary regime, it is at best uncertain as to whether it would perform as well -- particularly in a phasing-in-period -- as the present system as amended, in protecting lawyers, clients, and the public at large.

6. CONCLUSION

The Ontario Securities Commission, through its hands-on experience in regulating the field of securities law, has performed a great service to the Law Society and the public alike by pointing out the need for a more efficient disciplinary process for dishonest or incompetent lawyers practising in the securities law field. The interests of all parties concerned are best protected, however, not by creating an uncertain, additional level of regulation of the conduct of lawyers, but rather by using the present system to its full potential. The goal of protecting the investing public from those whose conduct might endanger it cannot but be advanced by the increased cooperation and consultation of the Society and the Commission in matters such as this, and the Society looks forward to further assistance from the Commission in improving its procedures in this crucial area of the law.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of June, 1990

"J. Ground"  
Chair

Attached to the original Report in Convocation File, copy of:

- Item 1 - Submission of the Law Society of Upper Canada re: To the Ontario Securities Commission on Proposals for Amendments to the Securities Act. (Pages 1 to 7)

THE REPORT WAS ADOPTED

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CLINIC FUNDING COMMITTEE

Mr. Bastedo presented the Report of the Clinic Funding Committee of its meetings on May 23rd and June 6th, 1990.

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 June 12, 1990 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

June 12, 1990

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

The Clinic Funding Committee met on May 23, 1990. Present were: Philip Epstein, Q.C., Chairman, Thea Herman, Jim Frumau. The Committee met again on June 6, 1990. Present were: Philip Epstein, Q.C., Chair, Thea Herman, Jim Frumau.

A. DECISIONS

1. Applications to the Clinic Funding Committee

a. Court costs

(i) West Scarborough Community Legal Services

Pursuant to s.10 of the Regulation on clinic funding, the Committee has reviewed and approved an application for the payment of court costs from the above clinic, in an amount up to \$6,000.

B. INFORMATION

1. Designation of Budget 1990/91

The Committee has been informed by the Honourable Ian C. Scott, Q.C., Attorney General of Ontario, that the designation of funds for the community legal clinic system for 1990/91 will be in the amount of \$26,863,400. These funds will allow continued expansion through the creation of three new clinics, and cost of living increases. The designated funds include the amount of \$2.5 million for significant increases to salaries of clinic lawyers and community legal workers. This increase responds to concerns of the Clinic Funding Committee and the clinics about high turnover of clinic staff in recent years. Attached as Schedule A is a copy of the letter from the Attorney General.

2. Clinic Representatives Meeting

On June 8, 9 and 10, 1990, three representatives from each clinic in the province were invited to come together in Toronto to discuss matters of common concern and to identify issues to be addressed by a review of the clinic system. The participants had an opportunity to share their views, concerns and hopes with Board members, clinic staff and clinic Directors from 66 clinics, the Committee and clinic funding staff.

ALL OF WHICH is respectfully submitted

"T. Bastedo"  
Philip Epstein, Q.C.  
Chair  
Clinic Funding Committee

June 12, 1990

Attached to the original Report in Convocation File, copy of:

B-Item 1 - Letter from the Attorney General, Mr. Ian Scott dated May 1, 1990 to Mr. Philip Epstein. (Schedule A, pages 1 to 2)

THE REPORT WAS ADOPTED

.....

FRENCH LANGUAGE SERVICES COMMITTEE

Mr. McKinnon presented the Report of the French Language Services Committee dated June 22nd, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report.

Because a quorum could not be obtained, the Chair elected to cancel the French Language Services Committee meeting scheduled for June 13, 1990 at 4:30 p.m.

C.  
INFORMATION

1. Status on translation assignments

A written follow up was sent to key managers on May 16 regarding outstanding assignments which should be completed before June 30, but have not yet been submitted for translation in accordance with Phase 1 of the implementation plan.

The Centre de traduction et de terminologie juridiques in Ottawa advised that the translation of the Family Law course (June 15) and Business Law course (September 20) would be delayed by two to four weeks due to staff problems. Bélair Translation is on schedule with the translation of the Public Law and Estate Planning courses.

The total expenditure to date for translation is \$60,209.60 (including \$20,000 for the Dial-A-Law tapes). The total anticipated to June 30 is \$120,000.00, assuming that all priority assignments are completed. The total estimated to June 30 in the implementation plan was \$135,250.00

2. PAJLO meeting

The French Language Services Coordinator attended a meeting of the Programme national de l'administration de la justice dans les deux langues officielles (PAJLO). PAJLO deals with the issues that affect the French speaking legal community across Canada.

3. Promotion of French Language Services

The French Language Services Coordinator met with the Advance Planning and Communications agency to discuss means of promoting the Law Society's French Language Services. It was agreed that September (and not earlier) would be appropriate for the launch of the campaign which will focus on public and media relations.

4. Professional Conduct Handbook

The editing of the Professional Conduct Handbook's French version is on hold, pending approval from the Finance Committee of this special budget item.

5. Authority of French legislative texts

Following up on the Chair's earlier request for information, English and French versions of legislative texts from the Federal Government have equal authority and translations are therefore official. As for our Provincial Government, only the English version of legislative texts is official. However, effective December 1991, English and French versions of acts and statutes will have equal authority and translations will therefore be official. This information bears upon the approach the Society will take with respect to the Code of professional conduct.

6. Téléphone juridique

A number of English and French publications in Ontario have featured the Dial-A-Law service over the past few weeks. More requests were received from French legal clinics and associations for information and/or a supply of brochures. The French Language Services Coordinator gave a 15-minute telephone interview to Radio-Canada which was aired on June 4 at 4:50 p.m. on CJBC 860. The problems experienced with the Dial-A-Law line in Ottawa and Eastern Ontario have been resolved. The Toronto French system went live on Monday, June 4.

7. Grant applications

Our grant application to the Secretary of State and Ministry of the Attorney General has been submitted. We are awaiting their reply.

8. Joint Continuing Legal Education Task Force

The Law Society representatives met on June 6 to discuss the viability of a joint CLE task force formed by the Canadian Bar Association of Ontario (CBAO), the Association des juristes d'expression française (AJEFO) and the Law Society, whose mandate would be to plan, organize and promote a French CLE seminar to be held in January or February of next year. The first Joint CLE Task Force meeting will be held in Ottawa on July 20, 1990 at 10 a.m. Task force members are Ms. Brenda Duncan, Mrs. Dominique Paquet, Ms. Holly Harris and Mr. Michel Landry from the Law Society. Mr. Jacques Beauchamp will represent the CBAO and Mr. Denis Rail will represent AJEFO.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of June, 1990

"C. McKinnon"  
Chair

THE REPORT WAS ADOPTED  
.....

PUBLIC INFORMATION COMMITTEE

Mr. McKinnon presented the Report of the Public Information Committee of its meeting on June 14th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The PUBLIC INFORMATION COMMITTEE begs leave to Report.

Your Committee met on Thursday, the 14th of June, 1990, the following members were present: Mr. McKinnon (Acting Chair), Ms. Callwood, Messrs. Shaffer, Thom, Welch and Yachetti. Also in attendance were Ms. Angevine, Mr. Daniher and Mr. Windsor.

B.  

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ADMINISTRATION

1. EMERGING POLICY ISSUES

The Committee reviewed the attached memorandum (A-1) from the Chair of the Research and Planning Committee requesting input on this

matter. The memorandum identified Bencher Communication as one of these issues. The Committee noted that a sub-committee is already reviewing this matter. The Committee reviewed the second draft of the guidelines prepared by the Sub-Committee chaired by Mr. Manes. Revisions to the draft guidelines were discussed. Mr. McKinnon will take the Committee's views to the Sub-Committee.

2. ALTERNATIVE DISPUTE RESOLUTION

The Committee noted the attached synopsis of the Research and Planning Committee's report in this matter, (A-2). Mr. McKinnon will advise Mr. Spence that it would be premature for this Committee to review the communications aspect until a policy in this matter is adopted by Convocation.

3. PUBLIC INFORMATION DIRECTOR

The Committee reviewed progress to date in the revision of a job description and the review of potential candidates.

C.  
INFORMATION

1. CALL USAGE STATISTICS

The Committee reviewed the attached (A-3) statistics for the month of May. Dial-A-Law registered more than 48,000 calls, the highest number ever. This also represents the greatest year over year monthly increase in six months. The advertising campaign which has assisted in realizing the positive results of recent months will continue through July in most markets.

2. LRS RECRUITMENT

The Committee was advised that an advertisement seeking to recruit members of the Lawyer Referral Service in the area of lawyer negligence has been prepared.

3. COMMUNICATING INFORMATION ON THE COMPLAINTS PROCESS

The Committee was advised that the existing Dial-A-Law tape in the area is being reviewed. A new tape will be produced and promoted as required.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of June, 1990

"C. McKinnon"  
Chair

Attached to the original Report in Convocation File, copy of:

- B-Item 1 - Memorandum from Mr. James Spence to Chairs of Standing and Special Committees dated May 11, 1990 re: Emerging Policy Issues. (Marked A-1)
- B-Item 2 - Memorandum and enclosure from Mr. James M. Spence to the Chairs of Standing Committees dated May 10, 1990 re: Alternative Dispute Resolution. (Marked A-2)
- C-Item 1 - Call Usage Statistics Update (May 31, 1990) re: Dial-a-Law. (Marked A-3)

THE REPORT WAS ADOPTED

.....

PROFESSIONAL CONDUCT COMMITTEE

Mr. Strosberg presented the Report of the Professional Conduct Committee of its meeting on June 14th, 1990.

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 14th of June, 1990 at three o'clock in the afternoon, the following members being present: Messrs. Carter (Chair), Strosberg (Vice-Chair), Carey, Ruby, Somerville and Thoman.

A.  
POLICY

1. RETIRED JUDGES RETURNING TO PRACTICE (RULE 15)

This issue was canvassed briefly. The Judicial Appointments Advisory Committee, the Advocates' Society and the Canadian Bar Association - Ontario have been asked for their views. The Judicial Appointments Advisory Committee and the Advocates' Society have submitted responses. The CBAO is still working on its response.

The Committee recommends to Convocation that this matter be brought back for consideration when we have a better idea as to the progress being made in Court reform, more particularly if stage two is actually implemented.

2. PERSONAL INJURY TRIAL LAWYERS ASSOCIATION (PITLA)

The Personal Injury Trial Lawyers Association has been approaching lawyers in Ontario asking them to join. If you join PITLA they will refer clients to you. The fees that participating lawyers pay to PITLA are used to cover the TV advertising done by PITLA.

The Law Society has received inquiries from a number of Ontario lawyers who have been approached by PITLA and who wish to know if they can participate. They have been advised that they cannot do so until the Professional Conduct Committee has had an opportunity to pass on the proposal.

Attached are copies of an application form, the standard agreement used, a letter from Howard Feldman and a letter from the firm of Lynch, Cox, Gilman & Mahan which represents PITLA (numbered 1 - 7).

The Committee has concluded that Ontario lawyers who participated in this scheme would be involving themselves in steering.

Paragraph 5(g) of Rule 12 specifically addresses this question:

The lawyer shall not:

(g) act for or accept a brief from, or on behalf of a member of a club or organization, as for example an automobile club which makes a practice of "steering" its members, provided that a lawyer may assist a community social agency by providing legal advice or service on a gratuitous basis for persons falling within the scope of the agency's activities.

The Committee recommends to Convocation that it adopt its position and that the profession be advised not to participate.

B.  
ADMINISTRATION

1. REQUEST FOR ADVICE FROM THE  
ONTARIO REAL ESTATE ASSOCIATION

This association has a compensation scheme in place that operates to assist its members who have claims for lost commissions due to the bankruptcy or insolvency of a brokerage firm. It wishes to hire a lawyer who would assist their members. There would be a set fee charged to a member of the association for using the association's lawyer and the association would bear the lawyer's costs in excess of the fee charged its members.

Set out below is the proposal from the association:

The Ontario Real Estate Association (OREA) operates a Recovery Fund through which its members may make claims for commissions lost due to the bankruptcy/insolvency of a brokerage firm.

In the case of insolvencies, the member is required to verify their claim by obtaining a Judgement from a court of competent jurisdiction and a Writ of Seizure & Sale. Finally, an Assignment of the Judgement is registered in favour of OREA.

The majority of individual claims we are presently receiving exceed the Small Claims Court limits and require that the member pursue the matter in District Court with a lawyer.

The OREA Recovery Fund Committee is proposing to retain a lawyer who would be made available to the members, at their option, for the sole purpose of pursuing Judgements and Writs for Recovery Fund claims. The Committee would charge the member a set price for the service and subsidize the remainder of the lawyer's fee.

We ask that you please consider the above proposal and advise what, if any, concerns the Law Society might have in connection with the proposed service.

The Committee was a little perplexed by this inquiry and believes that it might constitute steering contrary to paragraph 5(g) of Rule 12.

The Committee decided to ask Convocation to make the ultimate determination.

2. REQUEST TO BE SHOWN ON THE LETTERHEAD OF  
AN ACCOUNTING FIRM AS ITS "TAX COUNSEL"

A lawyer wishes to be shown as tax counsel on the letterhead of an accounting firm. His proposal is set out below:

I write to you to inquire whether it is considered "acceptable" by the Law Society for a lawyer to allow his name to be used by a non-lawyer client in the latter's stationary, (sic) letterhead, and literature.

I have been asked by a firm of accountants, for whom I act as income tax counsel, whether they can publicize the fact of our relationship. Specifically, I think it is important to keep in mind that I will not be doing the advertising or promotion. Rather, the accounting firm wants it to be known that I am their legal counsel on income tax matters, which, of course, is a fact.

The Committee's Secretary said in replying to the inquiry: "I have some concern with the proposal by the accounting firm because it could be said to be a form of advertising that would lead to steering (contrary to Rule 12 of the Rules of Professional Conduct)".

This prompted the lawyer to send a further letter:

I. Rule 12

I have read through Rule 12 reasonably carefully and I would welcome the guidance of the Professional Conduct Committee on the interpretation of the rule and their ruling on my request.

I am not at all clear which of the various rules set out in Rule 12 take precedence. Generally speaking, I understand that the general thrust of the rules is to permit and not to prohibit advertising. That is, a lawyer is legally entitled to advertise unless specifically prohibited, and not vice versa. The general rule permitting advertising is subject to various rules of prohibition in the circumstances set out, for example, in Rule 12(5).

Thus, Rule 12(2) allows individual lawyers or firms to advertise their services in any medium including the use of brochures and similar documents. This right to advertise is subject only to the requirements in that subsection that the advertising should not be false, misleading, unverifiable, or in poor taste. Further the advertising should not be such to bring the profession or administration of justice into disrepute.

For the present purposes, I shall presume that the appearance of my name on an accounting firm's letterhead and professional literature constitutes advertising that is in good taste, not false, not misleading and verifiable. Further assurances, proof and documents in support of good taste, etc. can be furnished later.

Rule 12(5) says that:

"The (surely this should read "A") lawyer shall not:

(g) act for accept a brief from, or on behalf of a member of a club or organization, as for example an automobile club which makes a practice of "steering" its members, ..."

I hope that this rule does not apply to my proposal to have my name included on the letterhead of a professional firm of accountants. The firm of accountants is neither a club nor an organization in the sense used in that paragraph. The firm would not be "steering" its clients to me. Rather, I would be acting as counsel to the firm and would bill the firm directly for services rendered to the firm. In other words, the firm would retain my legal services in respect of problems which they consider more appropriately handled by legal counsel than by accounting professionals, particularly in the field of income tax law. They wish to publicize the fact that they retain legal counsel to answer legal questions instead of addressing these issues themselves. That form of advertising is neither false nor misleading. Indeed, it appears to me that it would be a rather succinct statement of verifiable facts displayed both accurately and, I assure you, tastefully in their literature: a form of truth in advertising.

The Committee identified the following issues as relevant:

- (1) The accounting firm would have to be satisfied that the Institute of Chartered Accountants had no objection to this being done.
- (2) Assuming that the Institute did not object and assuming that the advertisement did not offend Rule 12, the lawyer could appear as counsel with an asterisk indicating that the lawyer restricted his practice to tax law. The Professional Conduct Committee last year told a lawyer that he could not use the term tax counsel because it could give rise to the inference he was a specialist in tax law. At the present time there is no specialist designation in tax law.
- (3) The lawyer does legal work for the accounting firm and bills the firm for his work. He does not bill clients of the accounting firm.
- (4) Rule 12 does not specifically address this lawyer's inquiry. Could it be said that the appearance of this lawyer's name on the letterhead of the accounting firm could give rise to the inference that the accounting firm was also engaged in the private practice of law.

The Committee was uncertain as to the appropriate recommendation to make to Convocation.

Should Convocation decide to allow the lawyer's name to appear as counsel, the word tax should not be attached to it. Instead the description of practice restricted to tax law or practising in the field of tax law should appear by way of clarification.

C.  

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INFORMATION

1. ADEQUACY OF PARAGRAPH 1 OF THE COMMENTARY  
UNDER RULE 13 (DUTY TO DISCLOSE WRONGDOING)

The Committee had a representation from Mr. Stuart Thom who expressed concern that this paragraph was inadequate in that it did not give clear guidelines to members of the profession as to when wrongdoing should be reported.

The Committee will be creating a sub-committee over the summer to address this question.

2. DUTY OF DISCLOSURE BY THE CROWN

The Professional Conduct Committee had an opportunity to review this issue with the assistance of Ms Bellamy, Mr. Douglas C. Hunt, Q.C., the Assistant Deputy Attorney General, and Brian Trafford, the Director, Criminal Prosecutions at the Ministry of the Attorney General. Mr. Brian Greenspan of the Criminal Lawyers' Association was not able to attend but did furnish correspondence.

The Committee considered the adequacy of paragraph 9 of the Commentary of Rule 10 (set out below) and concluded it was adequate to address concerns in this area.

When engaged as a prosecutor, the lawyer's prime duty is not to seek to convict, but to see that justice is done through a fair trial upon the merits. The prosecutor exercises a public function involving much discretion and power, and must act fairly and dispassionately. The prosecutor should not do anything which might prevent the accused from being represented by counsel or communicating with counsel and, to the extent required by law and accepted practice, should make timely disclosure to the accused or defence counsel (or to the court if the accused is not represented) of all relevant and known facts and witnesses, whether tending to show guilt or innocence.

The Committee is aware that the Criminal Lawyers' Association and the Crown Attorneys' Association have concerns respecting other parts of Rule 10 (The Lawyer as Advocate). The Committee will create a special sub-committee to examine this Rule and other related Rules and will be inviting submissions from both organizations as to how Rule 10 and other related Rules could be improved.

Note: Deferred, see below.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of June, 1990

"H. Strosberg"  
Chair

Attached to the original Report in Convocation File, copy of:

- A-Item 2 - Application Form of Pitla (Personal Injury Trial Lawyers Association) U.S.A., Inc., letter from Mr. Howard J. Feldman of Gaertner and Math to Mr. Stephen Traviss dated June 5, 1990 re: PITLA U.S.A. Inc. and letter from Ms. Susan J. Hauck of Lynch, Cox, Gilman & Mahan dated June 12, 1990 to Mr. Stephen Traviss re: PITLA. (Numbered 1 to 7)

Item 2 under section C regarding Crown Disclosure was deferred until September Convocation.

THE REPORT WITH THE EXCEPTION OF C-ITEM 2 WAS ADOPTED  
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COMPENSATION FUND COMMITTEE

Mr. Thom presented the Report of the Compensation Fund Committee of its meeting on June 14th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The COMPENSATION FUND COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of June, 1990 at 11:45 a.m. the following members being present: R. Yachetti (Chair), H. Strosberg (Vice-Chair), J. Callwood, N. Graham, L. Legge, S. Lerner, B. Noble, and S. Thom. P. Bell and H.A. Werry also attended.

A.  
POLICY

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1. AMENDMENT TO THE GENERAL GUIDELINES

The Secretary reported that the Sub-Committee on the Compensation Fund General Guidelines met on February 20th, 1990 and discussed amending the Guidelines to allow beneficiaries of estates to make claims to the Fund on their own account instead of the personal representative. There was also a discussion of a limit of \$250,000. per estate for grants paid out of the Fund to all of the beneficiaries of an estate, until such time as the Society can determine what the effect will be on the Fund.

The Sub-Committee Report is attached. (Pgs. A1-A2)

RECOMMENDATION: After a discussion of the matter and consideration of the points raised in the Report of the Sub-Committee, your Committee recommends:

1. The guidelines should be amended to allow beneficiaries of an estate to make claims on their own account in lieu of the personal representative.
2. Claims by a personal representative for the benefit of creditors should not be accepted.

B.  
ADMINISTRATION

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1. EMERGING POLICY ISSUES

The Secretary reported that the Chair of the Research and Planning Committee has sent a memo to all of the Standing Committees indicating the topics to be discussed by that Committee during the coming year. He has requested suggestions from each of the Committees as to any further emerging policy issues that might be considered by the Research and Planning Committee in the coming year.

RECOMMENDATION: The Secretary was instructed to advise the Research and Planning Committee that there are no matters to be referred to that Committee for discussion during the coming year.

2. APPOINTMENT OF A REFEREE

The Secretary reported that B. Barry Shapiro, Q.C., will be retiring as a District Court Judge on June 23rd, 1990 and has requested that he be reappointed a Referee to hear Compensation Fund claims.

RECOMMENDATION: Your Committee recommends that B. Barry Shapiro, Q.C., be appointed for a three year term from June 22nd, 1990 to June 22nd, 1993.

Note: Motion, see page 213.

C.  
INFORMATION

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1. MEMORANDA OF ASSISTANT SECRETARIES

The Secretary reported that the following memoranda of Assistant Secretaries, Peter B. Bell and Heather A Werry were approved by the Review Sub-Committee and amounts of grants are shown on Schedule "A" attached.

(Pg. 3)

- a. David Waterhouse (Disbarred October 26/89)  
one claim
- b. Howard Gasoi (Disbarred April 26/90)  
two claims
- c. Nicolas C. Canizares (disbarred Oct. 26/89)  
one claim
- d. Kalmen N. Goldstein (suspended indefinitely Oct 26/89)  
four claims
- e. Roger W. Morris (disbarred May 26/88)  
one claim
- f. Eugene Nowak (disbarred Apr. 26/89)  
one claim

2. COMPENSATION FUND DECISION - SUPREME COURT OF CANADA

The Secretary reported that the Supreme Court of Canada, in its reasons for judgment rendered May 17th, 1990, held that the Law Society was a "person aggrieved" within the meaning of section 653 (now section 725) of the Criminal Code and as such could seek a compensation order at the time of the sentencing of a member or former member where the Law Society's Compensation Fund had paid monies out to victims of the convicted member or former member. The Court also held that, although it was not necessary to obtain the consent of the bankruptcy court before an order was made under section 653, leave of the bankruptcy court must be obtained were the Law Society to seek to register the order with a Superior court of a province. Stephen Traviss and Heather A. Werry were counsel for the Society as the intervener in the matter of Claude Fitzgibbon vs. Her Majesty the Queen and the Law Society of Upper Canada. A copy of the reasons is attached. (Pgs. C4-C28)

3. The total amount of accounts approved by Assistant Secretaries for the month of May, 1990 was \$1,240.99.

4. The Financial Summary for the eleven months, July 1st to May 31st, 1990, and the Activity Report are attached. (Pgs. 4-6)

ALL OF WHICH is respectfully submitted

DATED the 22 day of June, 1990

"S. Thom"  
Chair

SCHEDULE "A"

SCHEDULE OF GRANTS APPROVED BY  
THE COMPENSATION FUND COMMITTEE  
ON JUNE 14TH, 1990

| REFEREE/<br>ASSISTANT<br>SECRETARY                                   | FORMER<br>SOLICITOR                 | CLAIMANT  | AMOUNT<br>APPROVED   | CLAIMANTS<br>COUNSEL FEES |
|--|-------------------------------------|-----------|----------------------|---------------------------|
| B.W. Grossberg, Q.C.   |                                     |           |                      |                           |
|  | A. ROGALA<br>(disbarred Feb. 22/89) | 2         | 52,000.00            | 1,000.00                  |
| P.B. Bell<br>(disbarred Oct. 26/89)                                  | D. WATERHOUSE                       | 1         | 15,000.00            |                           |
| P.B. Bell<br>(disbarred Apr. 26/90)                                  | H. GASOI                            | 2         | 4,107.74             |                           |
| P.B. Bell<br>(disbarred Apr. 26/90)                                  | E. NOWAK                            | 1         | 3,938.00             |                           |
| P.B. Bell/<br>& H.A. Werry<br>(suspended indefinitely<br>Oct. 26/89) | K.N. GOLDSTEIN                      | 4         | 15,043.88            |                           |
| H.A. Werry<br>(disbarred Oct. 26/89)                                 | N.C. CANIZARES                      | 1         | 400.00               |                           |
| H.A. Werry   | R.W. MORRIS                         | 1         | 15,000.00            | 250.00                    |
| TOTAL GRANTS APPROVED<br>BY COMMITTEE                                |                                     | <u>12</u> | <u>\$ 105,489.62</u> |                           |
| TOTAL CLAIMANTS COUNSEL FEES<br>APPROVED BY COMMITTEE                |                                     |           |                      | <u>\$1,250.00</u>         |

Attached to the original Report in Convocation File, copy of:

- C-Item 1 - Schedule "A", Schedule of Grants Approved by the  
Compensation Fund Committee on June 14th, 1990. (Page 3)
- C-Item 4 - Financial Summary for the period July 1st, 1989 - May 31st,  
1990. (Pages 4 to 6)
- A-Item 1 - Report of the Subcommittee on the Compensation Fund  
Guidelines. (Marked A1 to A2)
- C-Item 2 - Copy of Reasons in the matter of Claude Fitzgibbon vs. Her  
Majesty the Queen and the Law Society of Upper Canada.  
(Marked C4 to C28)

It was moved by Mr. Thom, seconded by Mr. Rock that Mr. B. Barry Shapiro be appointed a referee for the Compensation Fund.

Carried

The balance of the Report was deferred to the September Convocation.

SECTION B-ITEM 2 OF THE REPORT WAS ADOPTED

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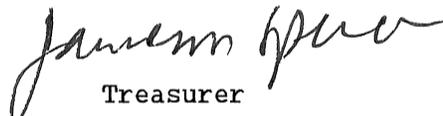
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"IN CAMERA"

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Confirmed in Convocation this *7th* day of *Sept*, 1990.

  
Treasurer