

MINUTES OF CONVOCATION

Friday, 25th April, 1997
9:00 a.m.

PRESENT:

The Treasurer (E. Susan Elliott), Aaron, Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Bobesich, Carey, Carpenter-Gunn, Carter, R. Cass, Chahbar, Cole, Copeland, Cronk, Crowe, DelZotto, Eberts, Epstein, Farquharson, Feinstein, Finkelstein, Harvey, Lamont, Lawrence, MacKenzie, Marrocco, Millar, Murray, O'Brien, Ortved, Pepper, Puccini, Ruby, Sachs, Scott, Sealy, Stomp, Strosberg, Swaye, Thom, Wilson and Wright.

.....

.....

IN PUBLIC

.....

The reporter was sworn.

MOTION: ELECTION OF BENCHER

It was moved by Mr. Feinstein, seconded by Mr. Cole that William Carter be elected a Bencher to fill the vacancy resulting from the appointment to the Bench of Madam Justice Denise Bellamy.

Carried

MOTION: REPORTS TAKEN AS READ

It was moved by Mr. Feinstein, seconded by Mr. Cole that the Report of the Director of Bar Admissions and the Draft Minutes for April 3rd and 4th, 1997 be adopted.

Carried

REPORT OF THE DIRECTOR OF BAR ADMISSIONS

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Bar Admissions begs leave to report:

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates having successfully completed the Bar Admission Course now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, April 25th, 1997:

Robert Seth Barasch	37th BAC
Jelica Boskovic	38th BAC
Blair Lesley Botsford	38th BAC
Claude Cadoch-Delmar	38th BAC
Alvaro Jose Carol	38th BAC
Marjan Ehsassi	38th BAC
Michel Joseph Gagne	38th BAC
Giacomo Negro	38th BAC
Oudit Narine Rai	38th BAC

B.1.3. Transfer from another Province - Section 4

B.1.4. The following candidates having completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, April 25th, 1997:

Frances Katherine Boyle	Province of British Columbia
Lorena Kathryn Harris	Province of Alberta

B.2. MEMBERSHIP UNDER RULE 50

B.2.1. (a) Retired Members

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

Frank Brodie	Aylmer, PQ
Hugh Belton Geddes	Windsor
John Bohdan Gregorovich	Toronto
Hartley Hersh Levine	Victoria, BC
Allan Robert Bremner O'Brien	Mahone Bay, NS
Paul Sitzer	North York
Janet Diane Snell	Toronto
Richard Ben Sorensen	Ottawa

B.2.3. (b) Incapacitated Members

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

Dawn Marie Pottie Scarborough

B.2.5. (c) Termination of Rule 50

The following member wishes to terminate his retirement under Rule 50 and return to active status:

Joseph Nicholas Ferris Toronto
Retired November 24, 1995

B.3. RESIGNATION - REGULATION 12

B.3.1. The following members have applied for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. In all cases the annual filings are up to date. In cases where the member was engaged in the practice of Ontario law for any amount of time, the member has declared that all trust funds and clients' property for which they were responsible have been accounted for and paid over to the persons entitled thereto. They have further declared that all clients' matters have been completed and disposed of, or arrangements made to the clients' satisfaction to have their papers returned to them, or have been turned over to another lawyer. The Complaints and Audit departments all report that there are no outstanding matters with these members that should prevent them from resigning. These members have requested that they be relieved of publication in the Ontario Reports:

Barbara Ellen Gottesman of New York, New York, was called to the Bar on March 22, 1991 and practised Ontario law from 1991 to 1994. The 1997 annual fee is outstanding.

Julius Kovac of Sarnia, was called to the Bar on June 26, 1958 and practised law from June 1958 to September 1996. He was suspended November 1, 1996 for non-payment of the annual fee. The 1996 and 1997 annual fees are outstanding.

Heather Michelle Manners of London, was called to the Bar on February 8, 1993 and has never practised law. The 1997 annual fee is outstanding.

James Stanley McCracken of Etobicoke, was called to the Bar on June 22, 1960 and practised law exclusively as an employee with the Board of Trade of Metropolitan Toronto from 1960 to the present. He is permanently retiring on April 25, 1997.

Gillian Mary Ready of Oxford, United Kingdom, was called to the Bar on March 31, 1989 and practised Ontario law from January 1990 to August 1990. The 1997 annual fee is outstanding.

Mark David Walters of Oxford, United Kingdom, was called to the Bar on February 16, 1995 and practised Ontario law from April 1996 to July 1996. The 1997 annual fee is outstanding.

C.
INFORMATION

C.1. READMISSIONS FOLLOWING RESIGNATION AT OWN REQUEST

C.1.1. The following former members have applied for readmission and have met all the requirements in that regard:

Shereen Hinda Benzvy Miller
Called: April 11th, 1986

Resigned:
February 24th, 1995

Jill Anne Eagleson
Called: March 30th, 1990

Resigned:
September 27th, 1996

Glenda Sheryl Perry
Called: February 7th, 1992

Resigned:
June 28th, 1996

C.2. CHANGE OF NAME

C.2.1.	<u>From</u>	<u>To</u>
	Lorraine Kathryn <u>Masterson</u> (Change of Name certificate)	Lorraine Kathryn <u>Mastersmith</u>
	Carol Ann <u>von Rennenkampff</u> (Marriage Certificate)	Carol Ann <u>Horn</u>

ALL OF WHICH is respectfully submitted
DATED this the 25th day of April, 1997

THE REPORT WAS ADOPTED

DRAFT MINUTES - April 3rd and 4th, 1997

THE DRAFT MINUTES WERE ADOPTED

(See Draft Minutes in Convocation file)

REPORT OF THE CLINIC FUNDING COMMITTEE

Meeting of March 20th, 1997

It was moved by Mr. Copeland, seconded by Mr. Ruby that the Clinic Funding Report be adopted.

Carried

25th April, 1997

CLINIC FUNDING COMMITTEE
April 3, 1997

REPORT TO CONVOCATION

Nature of Report: Decision-Making, Information

THE CLINIC FUNDING COMMITTEE met on March 20, 1997. In attendance were:

Committee members: Paul Copeland, Chair, Harriet Sachs, Vice-Chair,
Pamela Mountenay-Cain, Mark Leach, Gordon Wolfe

Joana Kuras, Clinic Funding Manager

This report contains:

- Funding decisions that require Convocation's approval.
- CFC submission to the Ontario Legal Aid Review, for information only

1. Funding Decisions

The Clinic Funding Committee has reviewed and approved the following funding allocations pending designation of 1997/98 funds by the Attorney General:

a. Summer Students

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

b. Special Projects

HIV & AIDS Legal Clinic (Ontario) - up to \$100,000
Tenant Duty Counsel - up to \$26,000 to South Etobicoke Community Legal Services
Interpreter/Translator Project - up to \$17,000 to Jane Finch Community Legal Services

2. Information

The Clinic Funding Committee has prepared a submission to the Ontario Legal Aid Review, stating the view that poverty law services are an essential component of the legal aid program and community legal clinics are an appropriate and effective model to deliver them. A copy of the submission is attached for your information.

ALL OF WHICH is respectfully submitted

Paul Copeland
Chair
Clinic Funding Committee

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

- 2. Copy of a submission from the Clinic Funding Committee to the Ontario Legal Aid Review - A Balanced Accountability Structure for a Unique Service dated March 1997.

THE REPORT WAS ADOPTED

CALL TO THE BAR

The following candidates were presented to the Treasurer and Convocation and were called to the Bar by the Treasurer and the degree of Barrister-at-Law was conferred upon each of them. They were then taken by Mr. Lamont before Mr. Justice Lloyd Brennan to sign the Rolls and take the necessary oaths.

Robert Seth Barasch	37th Bar Admission Course
Jelica Boskovic	38th Bar Admission Course
Blair Lesley Botsford	38th Bar Admission Course
Claude Cadoch-Delmar	38th Bar Admission Course
Alvaro Jose Carol	38th Bar Admission Course
Marjan Ehsassi	38th Bar Admission Course
Michel Joseph Gagne	38th Bar Admission Course
Giacomo Negro	38th Bar Admission Course
Oudit Narine Rai	38th Bar Admission Course
Frances Katherine Boye	Special, Transfer, British Columbia
Lorena Kathryn Harris	Special, Transfer, Alberta

.....

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

CEO's REPORT

Mr. Saso presented his Report to Convocation summarizing the activities, initiatives and results for the Law Society's operation during the first quarter of 1997.

General overview of developments, initiatives and results

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

A. FINANCE

First quarter activity

The Finance Department spent much of the first quarter completing year end results, preparing financial statements and participating in the audit by the Society's external auditors. Audited financial statements have been prepared and presented to the Finance and Audit Committee and form part of the latter's report to Convocation this month. The fee billing for the current fiscal year has been completed. The Society has received a positive management letter from its auditors, Coopers & Lybrand, which documents and acknowledges the substantial progress made by the Society's management in addressing the issues and concerns identified in the management letter pertaining to the year ended June 30, 1995. The letter accompanies the audited financial statements and will be discussed at Convocation on April 25.

Building & Facilities

- *Supreme Court Building 145 Queens St W.* This site has been listed for sale by The Ontario Realty Corporation. The last of the Society's property was removed from the building at the end of March. Now 90 per cent vacant, the last occupants are scheduled to vacate by the end of May. It is anticipated that the building will be demolished with work tentatively scheduled to commence around July 1. The government plans to operate the site as a parking lot until it is sold.

25th April, 1997

- *Osgoode Hall Master Plan.* A 10-year \$32 million capital investment program intended to sustain the provincial section of Osgoode Hall through the next century has been planned by the Government of Ontario. The plan has two components: a heritage plan to guide the preservation of the historic resource and, a development plan which will outline a thorough and cost effective approach to the general upgrade required to sustain long term program delivery for the tenants, public and building users. The first phase of the plan is scheduled to commence this summer and will include renovations to basements, judicial chambers and the Great Library storage and stacks. Site preparations for the construction will affect the west lawn - the former construction site will double in size and will be used to house trailers for subcontractors and to store materials and equipment. Some Law Society library staff and stacks may need to be temporarily relocated during the implementation of the plan. The execution of the construction plan will be monitored by Law Society management who have been included as stakeholders and will be attending regular steering committee meetings. Phase 2 of the Plan will follow in 1998 and Phase 3 in 1999. More information will be made available to Convocation on April 25.
- *City Hall Parking Garage.* The City of Toronto in conjunction with the Parking Authority of Toronto have a four-year plan in place for the repair of the parking garage roof at City Hall. The work involves stripping the landscaping to expose a portion of the roof slab, performing concrete and waterproofing repairs and replacing the landscaping. Phase 1, which has already begun and affects 150 yards of property to the east of the Society is not expected to impact on Law Society operations. The next three phases to be undertaken in 1998, 1999 and 2000 are close to the east elevation and the main entrance of the Law Society premises and our operations will be affected by noise, dust and access restrictions. Construction vehicles will also be using the laneway immediately adjacent to our east elevation during all phases of the work.
- *Wheelchair Access Ramp.* Tenders have been called for the construction of a permanent wheelchair access ramp to the east entrance of the Law Society property. The ramp was designed by NORR Partnership Limited and is intended as a replacement for the temporary wooden structure which has been in place for some time. It is anticipated that work will commence shortly and be completed within 30 days.

B. SECRETARIAT

A number of staff in the Secretariat have been actively participating in the redesign of the regulatory process--one of the four Project 200 initiatives currently underway. All of the Society's regulatory processes within the complaints, audit, discipline, trustee, professional conduct and professional standards areas are being mapped and scrutinized with a view to streamlining and establishing clearly defined targets for case management. As part of the re-engineering initiative, other legal regulators throughout Canada and the US are being benchmarked in order to obtain solid evidence of best practices in other jurisdictions. Two staff members have travelled to bar regulators in Georgia, Florida, Chicago and San Francisco in recent weeks to capture this information and feed it back to the process redesign team. Benchers who attended the staff presentation on April 10 (committee day) are aware of the scope and complexity of this exercise which will be completed in June.

Audit & Investigation

- *Joint LPIC/LSUC Forms Initiative.* In order to avoid the cost and duplication associated with collecting the same information twice from members, LPIC and the Society are exploring the possibility of merging the collection of practice profile information members are currently required to report to both operations. The merger of data collection would allow both LPIC and LSUC to have access to the information. If approved, this will require some and re-formatting of the Society's Membership Information Form for 1997. On completion of this project, members would have the option of filing forms on an "exception basis"--only updates to status would be required.
- *Forms Services Unit.* A forms unit was created in January to deal specifically with member forms issues and to assist members to comply with requirements. The unit responded to 2,774 calls from members or their accountants during the first quarter and receives up to 50 inquiries per day through e-mail. Over 22,000 members have filed membership information forms updating their status with the Society. These forms have been electronically scanned and the member information has been transferred into the Society's membership database.

First quarter audit activity

- No. of ongoing investigations: 159
- Matters authorized for future investigation: 43
- Current number of law firms under Society trusteeship (s.43): 38
- No. of members currently being monitored for potential trusteeship: 10
- Insolvencies reported: 22
- Bankruptcies reported: 2

Complaints

First quarter activity

- No. of complaints files opened: 992
- Percentage change over first quarter 1996: - 5.0
- Percentage of civil litigation complaints: 36
- Percentage of family law complaints: 20
- Percentage increase in third party complaints since 1994: +200
- Percentage change in the number of real estate complaints since 1994: - 20.0
- 20 per cent of all complaints relate to 300 lawyers

Discipline

First quarter activity

- Matters authorized and referred for prosecution and/or other action: 176
- Discipline complaints issued: 102
- Discipline complaints and applications heard and disposed of by Committee and Convocation: 47
- Admission applications heard: 2.
- Divisional Court and Court of Appeal matters disposed of: 3
- Unauthorized practice prosecutions completed: 1

- *Senior discipline counsel appointed.* Lesley Cameron has been promoted to the position of senior discipline counsel in the Discipline Department effective Monday, April 14. In addition to providing leadership to the staff, Lesley assumes the responsibility of fulfilling the Law Society's discipline mandate and providing advice and direction on policy matters in the regulatory area. Lesley joined the Society as discipline counsel two years ago and has consistently demonstrated excellent judgement and a high level of organizational and negotiation skills. Prior to joining the Society, Lesley was a litigator with Ontario Hydro's corporate legal department and before that an associate in commercial litigation with Cassels, Brock & Blackwell. After her call to the bar in 1987, Leslie served as a clerk to the Ontario Supreme Court.

Lawyers Fund for Client Compensation

First quarter activity

- Inventory of claims: 352
- Value of claims with limits applied: \$14.3 million
- New claims received: 116
- Value of new claims with limits applied: \$4.9 million
- Gross value of new claims: \$8.9 million
- Two members are responsible for two-thirds of the new claims:
 - ▶ 22 claims with a value of \$790,000 with limits applied relate to one member
 - ▶ 55 claims generated by another member have been closed by LPIC and referred to the Fund with a value of \$2.7 million with limits applied
 - ▶ the remaining 39 new claims are single claims made against members
- Claims closed: 71
- Claim payments: \$1.8 million
- Staff have been consulting with the Compensation Fund Committee to review the operation and viability of the Fund and to address the issue of its eroding capital base.

Practice Advisory

First quarter activity

- No. of calls received: 2,301
- *GST Policy*
Confusion as to when (and whether) solicitors should charge their clients for GST on disbursements was cleared up after three years of negotiation between the Law Society, the CBA(O) and Revenue Canada. Revenue Canada's new policy clarifies which disbursements are subject to GST and outlines its application to various practice areas. The policy was effective April 1 and members have been notified. Further details are being provided in the April issue of the *Ontario Lawyers Gazette*.

Professional Standards

First quarter activity

- No. of lawyers authorized to participate in practice review: 156
- No. of authorizations pending: 16
- No. of attendances at member's practices: 120
- No. of start-up workshops delivered jointly with Practice Advisory: 5

C. EDUCATION

Bar Admission Course

A complete review of the staffing requirements of the bar admission course program is in process to maximize effectiveness and efficiency within available resources. Reassignment and realignment of responsibilities within the program will provide opportunities for staff development, while improving functional operations. A specific goal of this review is to ensure better co-ordination of those functions reporting to the registrar.

- *Phase I.* As part of an overall plan to achieve better cost management and more effective and efficient delivery of the bar admission course, the number of Phase 1 sessions offered in Toronto in 1997 has been reduced from three to two. For 1997, Ottawa and London will continue to offer two sessions in English, and Ottawa will offer one session in French. For 1998, the Ottawa and London English sessions are under review to determine if any further reduction is feasible. No further reduction is contemplated for Toronto, unless there is a significant decline in enrolment. Tuition for Phase 1 remains unchanged from last year at \$945 + G.S.T.
- *Phase 2.* A comprehensive review of the approval process for principals is underway to create a simpler, more timely process that is easier and less costly to administer. As part of that review, the filing requirements for articling will be examined to ensure relevance to and alignment with goals of the articling program.
- *New Registrar.* Dr. Thomas Kowall was appointed registrar for the bar admission on April 3. In addition to administering all phases of the bar admission course and admission to membership, Tom will also provide direction on articling, financial aid and placement, and other related education issues. Tom brings a distinguished record in the development of registrarial functions and student services gained, in part, through nineteen years experience as registrar for two colleges. Most recently, he served as registrar at the Ontario College of Art and Design.

Statistical summary

- No. of students enrolled in the 38th bar admission course: 1,164
- Percentage change over previous year: -6.0
- No. called to the bar in February 1997: 989
 - No. called in London: 72
 - No. called in Ottawa: 144
 - No. called in Toronto: 773
- No. of students who must complete supplemental exams in order to qualify for call: 115
- No. of students who have deferred their call: 60
- No. of students enrolled in Phase I (summer '97): 1,163
- Percentage of those students who are enrolled in French program: 4
- No. of students enrolled in Phase III (fall '97): 1,310
- Percentage change over last year: -13.0
- Percentage students enrolled in Phase III French program: 4

Articling Placement

Statistical summary

- No. of students required to article in 1997: 1,095
- Percentage change over last year: -7.0
- No. who have secured articling positions: 876 students (80 per cent)

- No. who had secured articling positions last year: 934 (79 per cent)
- No. who continue to seek articling positions: 218 students (20 per cent)

The 218 students who are seeking articles will be tracked over the coming months. As in prior years, special initiatives to assist these students are under way. By December 31, 1996, more than 98 per cent of students seeking articles in the 1996-1997 term had been placed.

Specialist certification program
Statistical summary

- No. of certified specialists in Ontario: 605
 - ▶ Civil Litigation 356
 - ▶ Criminal Law 118
 - ▶ Family Law 58
 - ▶ Bankruptcy & Insolvency 9
 - ▶ Environmental Law 16
 - ▶ Immigration Law 14
 - ▶ Intellectual Property Law 18
 - ▶ Labour Law 12
 - ▶ Workers' Compensation 4

First quarter activity

- No. of specialists certified: 15
- No. of specialists recertified: 24
- No. of applicants seeking certification: 42

A draft proposal on how effective continuing legal education can be used to support the specialist certification process is being drafted by CLE staff. A needs-assessment study is being conducted to obtain better information on effective educational standards for specialist certification.

Continuing Legal Education

CLE produces 50 to 60 programs yearly, and, in addition, runs video replays. CLE is giving very high priority to ensuring that programs become affordable and geographically accessible throughout the province. CLE is working with the new CLE advisory group with the objective of ensuring that continuing legal education providers in Ontario collectively contribute to the process. Members of the advisory group are representative of other institutions and the various regions of Ontario.

First quarter activity

No. of programs held: 28
 No. of registrants: 1,571

First Quarter Program	No. Registrants
<i>Live</i>	
A Labour Law Primer	7
Practice & Procedure before OLRB	10
Practice & Procedure before the OLRB/Labour Law Primer	71
Effective Client Representation in an ADR Process	65
Intellectual Property Law: A Year in Review	131
The Power Based Practice	138
Business Agreements	187
Legal Negotiation	136

Public Authorities Liability	39
Practice Procedure & Advocacy	123
Basic Family Mediation	35
Case Management Updated	245
Specialty Sales: A Step-by-Step Approach	109
No Pain, No Gain: Solicitor & Client Assessments	121
The Firm behind the Website: A Planning & Strategy Seminar	87

Video

Discovery in Commercial Law	8
Six-Minute Estates Lawyer	7
Quandries and Pitfalls in Construction Liens	1
Six Minute Estates Lawyer	12
Civil Litigation for Lawyers	6
Going for Brokers	5
Six Minute Business Lawyers	8
Intellectual Property Law: A Year in Review	1
Labour Law Update	1

Video

Practice Procedure & Advocacy in the Divisional Court	3
Labour Law Primer	1
Case Management Updated	13
Practice & Procedure before OLRB	1

Co-venture with federal department of justice

CLE will develop and provide educational workshops for the federal justice department in the areas of legal writing, presentation skills, client development, and marketing. The programs, in workshop format, will be provided from September 1997 to March 1998 in Ottawa, Toronto, Edmonton, Halifax, Moncton, Saskatoon, Winnipeg and Yellowknife.

Law Society Special Lectures

Benchers Kim Carpenter-Gunn and defence counsel Jim Flaherty are co-chairing the 1997 Law Society Special Lectures in the area of personal injury--the first special lectures held on this topic since 1958. The Special Lectures in Real Estate, originally scheduled to be held in this year, will be offered in 1998 because of the significant increase in the number of real estate programs offered in 1997.

Upcoming programs

- Real estate. The Law Society and the CBA(O) are sponsoring two real estate-related programs to take place at the Metropolitan Toronto Convention Centre, and simultaneously by satellite in 14 other centres across Ontario. On May 6 a full-day program on title insurance will be offered at the reduced price of \$75 thanks to co-sponsorship with LPIC. On October 24, a program on electronic registration will be offered for \$125 thanks to a subsidy by Teranet Land Information Services.
- Computer Education. In May and June, CLE will offer hands-on computer education courses on the following topics: Introduction to Computers, Basic Word-Processing, Administration and File Management, Organizing Your Practice on Computer, Computers in Trusts and Estates, Computers in the Practice Litigation, Computers in Your Real Estate Practice, and Legal Accounting Fundamentals. A new series of computer education programs is being developed, to take place beginning in September.

Upcoming publication

CLE has received the first of two \$10,000 grants from the estate of the Honourable William Howland, administered by the Law Society Foundation. The grants are in support of publication of the new Law Society of Upper Canada Annotated Pleadings, a work that will provide sample pleadings for a wide variety of causes of action, and will assist litigators in developing the theory of their cases and in using precedents creatively and responsibly, rather than mechanically. It is anticipated that the work will be published in 1998.

D. INFORMATION SERVICES & LIBRARIES

Libraries

- *Technology roll out to county libraries.* The roll-out of PC's, printers and CD-ROM towers to the county libraries has begun and has been enthusiastically received by the county associations. County library staff are receiving training on CD-ROM and QL product usage and this will also be provided to lawyers. This is to ensure that members take advantage of the opportunity to become proficient at the use of electronic methods to do research.
- *County library visits.* During the first quarter, a further six county libraries have been visited. Reports have been given and discussions held with the local executive and library committee. Positive response and appreciation has been expressed for these visits. All forty-seven county libraries will have been visited by the end of 1997.
- *Great Library update.* Great Library staff provided a series of legal research seminars to members during the first quarter, these were sold out and feedback from members has been very positive and we therefore intend to offer them on a regular basis. Work has begun on the physical redesign and reorganization of the library. This project is a major undertaking that will result in improved service and accommodation for patrons, enhanced access to technology and to the collection, and more efficient staff work areas. Sensors on the new security gates have logged 31,000 patron visits to the library during the first quarter.
- *QuickLaw Contract.* Following intensive negotiation and consultation with the County Law Associations, a draft contract has been approved to provide QuickLaw services at a flat rate to all county libraries. Lawyers will be able to conduct online searches free of charge from county library computers. Each member of a local association will be given a personal password which can be used exclusively in the county library. The Law Foundation has provided sufficient funding for the program's first year. Free training will be provided to all lawyers who want to become proficient at conducting online searches.

25th April, 1997

- *CD-ROM Contract.* Carswell has provided two proposals for group purchasing of their CD-ROM products by county libraries. Substantial discounts of 40 to 50 per cent are being offered on the condition that all 47 counties subscribe to the deal. The packages offered consist of either five or seven CD-ROM products with free training provided to all lawyers and librarians. These CD's will be made accessible through the PC's and CD-ROM towers currently being installed at all County Libraries.

The technology working group of the Professional Development & Competence Committee approved in principle participating in both the QuickLaw and CD-ROM contracts. The information is being presented to the county and district law association executives for their approval.

E. HUMAN RESOURCES

Project 200

The re-engineering initiative launched by the Law Society last fall--known as Project 200-- is being spearheaded by the human resources department. While benchers present at the April 10 presentation are aware that re-engineering will have an impact on many of the Law Society's processes--including the regulatory process--significant process changes will also occur in the human resources area where it is expected that an infrastructure will take shape for the recruitment, selection, training, performance management and compensation of employees. The overall objective of the human resources project is to ensure the Society will:

- ▶ attract and hire employees with the right combination of skills, knowledge, abilities and attitude
- ▶ provide timely and specific training and development so employees can perform multiple tasks and functions in a streamlined environment
- ▶ create an environment that encourages and rewards initiative and risk taking and measures performance based on results
- ▶ delivers a compensation structure that fosters operational success and employee retention.

The four Project 200 teams have just concluded a thorough analysis of Law Society operations with a focus on technology and information systems, the regulatory process, services for members and the public, and, human resource practices. In addition to the internal review, employee team members have been systematically selecting and interviewing comparable businesses and regulators to determine "best practices" that will prepare us for the next stage of our work--redesign--expected to be completed in June. Once the findings have been documented and finalized, benchers will receive information and/or briefings to ensure they remain current with new developments.

F. COMMUNICATIONS

Lawyer Referral Service
First quarter results

Tight restrictions on legal aid eligibility have resulted in greater numbers of clients seeking pro bono assistance through the Lawyer Referral Service. Also, more individuals are seeking access to legal information and resources to assist in their own representation.

- ▶ No. of clients seeking legal assistance/information: 32,339
- ▶ No. of clients referred to a lawyer: 25,871
- ▶ Percentage change over first quarter '96: -24.0

Dial-a-Law
First quarter results

Budget restraints--particularly the elimination of the marketing budget and restrictions on Yellow Pages funds--have had a downward impact on Dial-a-Law usage.

- ▶ No. of calls received: 48,448
- ▶ Percentage change over first quarter '96: -13.0

Ontario Lawyers Gazette

The profession's response to the first issue of the *Gazette* which was launched in February, has been overwhelmingly positive. Benchers are encouraged to provide their comments and suggestions. As well, benchers who would like to contribute editorial ideas or stories are invited to contact the Communications Department.

Communications with members

Three relatively new technologies--broadcast fax, e-mail and fax-on-demand--have been used recently to communicate important fast-breaking news to our members at less than one-tenth of the cost of traditional methods such as mail. On March 17, two days after the conclusion of an agreement with Revenue Canada on the application of GST to lawyers' disbursements, broadcast fax technology and e-mail were used to distribute notices to about 16,000 members who had registered their fax numbers and e-mail addresses with the Society. In addition to summarizing changes to Revenue Canada's GST policy, the notice invited interested members to obtain a full copy of the nine-page policy by calling a telephone number and having the policy faxed to their office. Alternatively, the full policy could be down loaded directly from the Society's Internet site. Over 1,200 members chose the fax back option and another 1,140 members down loaded the policy from the Internet. Total cost for this form of member communication: \$1,260. Turnaround time: two days. By comparison, printing and mail charges would have amounted to approximately \$16,000, with a minimum 10 day turn-around time.

25th April, 1997

Bicentennial celebrations

- *Bicentennial awards of merit.* Twenty-eight of the 62 awards have been distributed to award winners in their communities to date as of April 18. A number of award recipients have indicated that they will join benchers, staff and dignitaries at Niagara-on-the-Lake where the Society can collectively acknowledge their contributions to meritorious public service. Press coverage of the awards has been positive in every case. As part of the CEO's report, a package of bicentennial materials is enclosed under separate cover that includes copies of press clippings and a schedule for pending awards.
- *Niagara-on-the-Lake.* By now benchers should have received confirmation of their hotel reservations, information about transportation arrangements to and from Niagara-on-the-Lake and a map with directions to Niagara-on-the-Lake from Toronto, as well as an itinerary of activities for the celebrations. If you have not received these materials, please contact our bicentennial coordinator, Kelly Swinney at 947-3904.
- *Bicentennial book launch.* Over 200 guests were on hand in Convocation Hall on February 27 to celebrate the publication and official launch of the Law Society's history. Distinguished guests included Chief Justices McMurtry and Lesage, judges, prominent members of the legal community, as well as members of the literary community, local historians, politicians and media.

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

A copy of Management's compliance with the executive limitations prescribed by Convocation. (Pages 1 - 8)

Mr. Saso called upon Mr. Ken Crossley, the Law Society's Building Manager to provide details of the government's construction plans to the provincial section of Osgoode Hall and what effect it would have on the building overall.

There were questions from the Bench.

It was moved by Mr. Marrocco, seconded by Ms. Puccini that the Law Society seek an additional position on the Steering Committee.

Carried

REPORT OF THE FINANCE AND AUDIT COMMITTEE

Meeting of April 10th, 1997

Mr. Murray presented for Convocation's approval, the combined Errors and Omissions audited Statements, the General Fund audited Statements for the year ended December 31st, 1996, the Lawyers Fund for Client Compensation audited financial Statements for the year ended December 31st, 1996 and the County Library Technology Purchase.

REPORT TO CONVOCATION

Purpose of Report: Decision Making

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE
PROCESS.....1
RECOMMENDATIONS.....2
COMBINED ERRORS AND OMISSIONS INSURANCE FUND
AUDIT REPORT.....3
COMBINED ERRORS AND OMISSIONS INSURANCE FUND
ACTUARY REPORT.....4
COMBINED ERRORS AND OMISSIONS INSURANCE FUND
AUDITED FINANCIAL STATEMENTS.....6
GENERAL FUND AND LAWYERS FUND FOR CLIENT COMPENSATION
SUMMARY MEMORANDUM.....15
GENERAL FUND AUDIT REPORT.....17
GENERAL FUND AUDITED FINANCIAL STATEMENTS.....18
LAWYERS FUND FOR CLIENT COMPENSATION
AUDIT REPORT.....26
LAWYERS FUND FOR CLIENT COMPENSATION
AUDITED FINANCIAL STATEMENTS.....27
COUNTY LIBRARY TECHNOLOGY PURCHASE - PHASE I.....32
COUNTY LIBRARY TECHNOLOGY PURCHASE - PHASE II.....33
COUNTY LIBRARY TECHNOLOGY PURCHASE - PHASE III.....34

TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on April 10, 1997. In attendance were R. Murray (Chair), A. Chahbar, E. DelZotto, A. Feinstein, P. Furlong, P.B.C. Pepper, G. Swaye, J. Wardlaw, R. Wilson, and B. Wright.

Staff in attendance were J. Saso, W. Tysall, D. Carey, R. White, and K. Crossley. Also in attendance were B. Graham, K. Harrington and S. Taylor of Coopers & Lybrand.

1. The Committee has four matters that require Convocation's approval:
 - Combined Errors and Omissions audited financial statements,
 - The General Fund audited financial statements for the year ended December 31, 1996,
 - The Lawyers Fund for Client Compensation audited financial statements for the year ended December 31, 1996,
 - County Library Technology Purchase

25th April, 1997

2. This report contains:
 - the Auditor's Report and the Actuary's Report for the Combined Errors and Omissions Insurance Fund (pages 3 - 5),
 - audited financial statements for the Combined Errors and Omissions Insurance Fund (page 6 - 14),
 - General Fund and Lawyers Fund for Client Compensation summary memorandum from the Chief Financial Officer (pages 15 - 16),
 - the Auditor's Report for the General Fund (page 17),
 - audited financial statements for the General Fund (pages 18 - 25),
 - the Auditor's Report for the Lawyers Fund for Client Compensation (page 26),
 - audited financial statements for the Lawyers Fund for Client Compensation (page 27 - 31),
 - three memoranda from the Chief Information Officer outlining the County Library Technology project and its three phases (32 - 34)
3. The Combined Errors and Omissions Insurance Fund audited financial statements were presented to the Committee, on March 13, 1997, by Malcolm Heins (President) and Michelle Strom (Chief Financial Officer) of the Lawyers' Professional Indemnity Company.
4. The Finance and Audit Committee recommends to Convocation that the audited financial statements for the Combined Errors and Omissions Insurance Fund be approved.
5. The General Fund audited financial statements were presented to the Committee by Wendy Tysall (Chief Financial Officer).
6. The Finance and Audit Committee recommends to Convocation that the audited financial statements of the General Fund be approved.
7. The Lawyers Fund for Client Compensation audited financial statements were presented to the Committee by Wendy Tysall (Chief Financial Officer).
8. The Finance and Audit Committee recommends to Convocation that the audited financial statements of the Lawyers Fund for Client Compensation be approved.
9. The Committee was presented with, and discussed, the issues surrounding the further funding requests for the County Libraries Technology acquisitions. The funding requested has been collected through the technology portion of the County Library levy in prior years' and is available for this purpose. The Professional Development and Competence Committee and the CDLPA Library committee have approved the acquisition of this technology for the County and District Libraries.
10. The Finance and Audit Committee recommends to Convocation that the further request for funding the County Libraries technology acquisitions be approved. Convocation's approval for this expenditure is being sought under Executive Limitations policy with respect to Asset Administration and Acquisition of Services where it is stated, "Unless otherwise directed by Convocation, the CEO shall not make any capital purchases or commit the Society to any capital purchase of a value greater than \$100,000.

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

- (1) Copy of the combined Errors and Omissions Insurance Fund Audit Report. (page 3)

- (2) Copy of the combined Errors and Omissions Insurance Fund Actuary Report. (page 4)
- (3) Copy of the combined Errors and Omissions Insurance Fund Audited Financial Statements. (pages 6 - 14)
- (4) Copy of the General Fund and Lawyers Fund for Client Compensation Summary Memorandum. (pages 15 -16)
- (5) Copy of the General Fund Audit Report. (page 17)
- (6) Copy of the General Fund Audited Financial Statements. (page 18 - 25)
- (7) Copy of the Lawyers Fund for Client Compensation Audit Report. (page 26)
- (8) Copy of the Lawyers Fund for Client Compensation Audited Financial Statements. (page 27 - 31)
- (9) County of the County Library Technology Purchase (Phase I, II and III). (pages 32 - 34)

Finance and Audit Committee
April 10, 1997

REPORT TO CONVOCATION

Purpose of Report: Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE
PROCESS.....1

LAWYERS' PROFESSIONAL INDEMNITY COMPANY FINANCIAL
STATEMENTS.....2

TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on March 13, 1997. In attendance were V. Krishna (Acting Chair), A. Chahbar, T. Cole, A. Feinstein, P. Furlong, D. Murphy, P.B.C. Pepper, G. Swaye, J. Wardlaw and R. Wilson. Staff members in attendance were J. Saso, W. Tysall, D. Carey, and R. White. Others in attendance were D. Porter (Legal Aid) and B. Graham (Coopers & Lybrand), M. Heins and M. Strom (LPIC), D. Ross (Deloitte and Touche), J. Taylor (Taylor Hazell Architects Ltd.) and T. Sim (Ontario Realty Corporation).

- 1. The Committee is reporting on the following matter:
 - Lawyers' Professional Indemnity Company audited financial statements for the year ended December 31, 1996

25th April, 1997

2. This report contains:
 - the Auditor's Report and the Actuary's Report (pages 2 - 3),
 - audited financial statements (pages 4 - 12).
3. The Lawyers' Professional Indemnity Company audited financial statements were presented to the Committee by Malcolm Heins (President) and Michelle Strom (Chief Financial Officer) of the Lawyers' Professional Indemnity Company on March 13, 1997. These statements have been approved by the Board of Directors of the Lawyers' Professional Indemnity Company.

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

- (1) Copy of the Auditor's Report and the Actuary's Report. (pages 2 - 3)
- (2) Copy of the audited financial statements. (pages 4 - 12)

It was moved by Mr. Murray, seconded by Mr. Feinstein that the further request for funding the County Libraries technology acquisitions be approved.

Carried

Convocation took a brief recess at 10:30 a.m. and resumed in camera at 10:45 a.m.

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

REPORT OF THE FINANCE AND AUDIT COMMITTEE

It was moved by Mr. Murray, seconded by Mr. Feinstein that the audited financial Statements of the Combined Errors and Omissions Insurance Fund, General Fund and Lawyers Fund for Client Compensation be approved.

Carried

THE REPORT WAS ADOPTED

25th April, 1997

REPORT OF THE BOARD OF DIRECTORS OF THE LAWYERS PROFESSIONAL INDEMNITY COMPANY

Mr. Strosberg presented his Report on TitlePlus advising that the Ontario Insurance Commission had issued the Title Insurance licence on April 17th, 1997 and that LPIC would begin selecting law firms to test the TitlePLUS software and the policy of title insurance.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

The current members of the Board are Ms. Carpenter-Gunn, Mr. Croft, Mr. Crowe, Mr. Cutbush, Mr. Heins, Ms. Hoff, Mr. Holbrook, Mr. Marrocco, Mr. McCormick, Mr. Murray, Ms. Sachs, Mr. Schjerning, Mr. Sonley and Mr. Strosberg (Chair).

TITLEPLUS

1. On February 28, 1997, when I addressed Convocation, in camera, on the status of LPIC's title insurance licence application to the Ontario Insurance Commission, I also undertook to report in public as soon as practical. Here, now, is that report.
2. LPIC applied for a licence to sell title insurance on June 24, 1996. The Ontario Insurance Commission considered the application for a very long time, finally issuing the title insurance licence on April 17, 1997.
3. As I advised Convocation on February 28th, detailed information sessions were planned throughout the Province in the expectation that the OIC would ultimately grant the licence. These sessions will now be quickly completed. In the next two weeks, LPIC will begin "beta testing". Beta testing involves a process in which selected firms are asked to use TitlePLUS software and the policy of title insurance. The testing period will enable all necessary refinements to be made before the general release of TitlePLUS.
4. On May 6, 1997, LPIC will sponsor the CBAO - Law Society program on title insurance, a program which will be available throughout the Province by way of satellite hook-up.
5. In August, 1997, LPIC will also begin training up to 2,500 members and their staff in the use of the TitlePLUS software. The training sessions will take place throughout the Province in groups of 15 persons or less.
6. In or by early September, 1997, LPIC then plans to make the TitlePLUS software and the insurance policy available for sale. The commercial release of TitlePLUS will take place on a regional basis so that lawyers in any given region will not be unfairly advantaged or disadvantaged in relation to others in the region.
7. LPIC has also entered into joint venture agreements with Teranet and the Chicago Title Insurance Company. The joint venture with Teranet is in relation to the software, while the arrangement with the Chicago Title Insurance Company is for a 50-50 risk split of the policy of insurance.

25th April, 1997

8. LPIC negotiated both joint venture contracts on the basis that it is the owner of the TitlePLUS software and the owner of the insurance business generated by its use.

9. Finally, LPIC has scheduled a full briefing of TitlePLUS for Benchers on Wednesday, May 7, 1997 at Osgoode Hall. I invite all benchers to attend.

The E & O Deficit

10. As of March 31, 1997, the deficit in the E & O fund was approximately \$65,000,000. By contrast, the deficit as of June 30, 1994 was \$154,090,000.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April, 1997

Harvey T. Strosberg
Chair
Lawyers' Professional Indemnity
Company

ELECTRONIC REGISTRATION OF TITLE DOCUMENTS

Mr. Maurizio Romanin and Mr. James Leal, members of the Law Society/CBA-O Joint Committee presented a slide presentation of the preliminary report on the Electronic Registration of Title Documents.

(See copy of Preliminary Report in Convocation file)

At the conclusion Messrs. Romanin and Leal took questions from the Bench.

SUSPENSIONS Re: Membership Fee

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid the Membership Fee, and whose name appears on the attached list, be suspended from May 1st, 1997 and until their fee is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

SUSPENSIONS Re: Errors and Omissions Insurance Levy

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid the Errors and Omissions Insurance Levy, and whose name appears on the attached list, be suspended from May 1st, 1997 and until their levy is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Meeting of April 10th, 1997

Re: Amendment to Rule 56 of the Rules

Mr. MacKenzie presented the proposal that Rule 56 of the Rules made under subsection 62(1) of the Law Society Act be amended to provide for the use of the Electronic Trust Transfer Requisition.

Professional Regulation Committee
April 10, 1997

REPORT TO CONVOCATION

Purpose of Report: Decision-Making

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS 1

FORM FOR ELECTRONIC TRUST TRANSFERS 2

 A. NATURE OF THE ISSUE 2

 B. BACKGROUND 2

 C. ANALYSIS 3

 The Requirement for a Committee's Proposal to Convocation 3

 The Policy Governance Perspective 4

 The Committee's Proposals for Convocation's Consideration 4

 Proposed Electronic Trust Transfer Requisition 4

 Proposed Amendment to Rule 56 4

 Proposed Form of Motion for Convocation 5

 Options and Alternatives for Decision by Convocation 5

DRAFT RULES OF THE DISCIPLINE HEARING PROCESS 6

 A. NATURE AND SCOPE OF THE ISSUE 6

 B. BACKGROUND 6

 C. OPTIONS ANALYSIS 7

 The Role Statement 7

 Overview of the New Rules 7

 The Requirement for Convocation to Adopt the Revised Rules 8

 Policy Discussion 8

 The Committee's View 9

 Options and Alternatives for Decision by Convocation 10

INFORMATION 11

 A. REPORT ON THE COMPLAINTS DEPARTMENT 11

 B. DUTY COUNSEL AT DISCIPLINE HEARINGS 12

 C. WORKING GROUP ON TECHNOLOGY IN THE DISCIPLINE PROCESS 13

 D. OPERATIONS OF THE SECRETARIAT DEPARTMENTS 13

APPENDIX 1 - Regulation 708
Sections 14 and 15, as amended 15

APPENDIX 2 - Electronic Trust Transfer Requisition 22

APPENDIX 3 - Extracts from the *Law Society Act* and Rules 23

APPENDIX 4 - Background Paper on the
Revised Rules of the Discipline Hearing Process 25

APPENDIX 5 - Summary of the Revised Rules of the Discipline Hearing Process 55

APPENDIX 6 - Rules of the Discipline Hearing Process 61

TERMS OF REFERENCE/COMMITTEE PROCESS

1. Professional Regulation Committee ("the Committee") met on April 10, 1997. In attendance were:

- Carole Curtis (Chair)
- Paul Copeland
- Gary Gottlieb
- Samuel Lerner
- Gavin MacKenzie
- Clayton Ruby
- Niels Ortved
- Hope Sealy
- Stuart Thom

Staff: Janet Brooks, Rhonda Cohen, Georgette Gagnon, Scott Kerr, Glenn Stuart, Michael Seto, Richard Tinsley, Jim Varro, and Jim Yakimovich

2. This report contains:

- the Committee's proposal to amend Rule 56 of the Rules made pursuant to the *Law Society Act* to prescribe an electronic trust transfer requisition form
- the Committee's recommendation for adoption of revised rules of the discipline hearing process
- Information on
 - i. the Committee's review of a report on the operations of the Complaints Department
 - ii. the status of the Committee's consideration of a *pro bono* duty counsel program for discipline hearings
 - iii. the Committee's working group on technology in the discipline process
 - iv. operations of Secretariat departments

FORM FOR ELECTRONIC TRUST TRANSFERS

A. NATURE OF THE ISSUE

3. To facilitate lawyers' electronic transfer of trust funds, which is now permitted as a result of amendments to Regulation 708 under the *Law Society Act*, a form as prescribed by the Rules made pursuant to the *Law Society Act*, as described in the Regulation, is required.

4. The Committee proposes that Convocation:
 - a. amend Rule 56 of the Rules made under subsection 62(1) of the *Law Society Act* to provide for the use of the Electronic Trust Transfer Requisition, and
 - b. adopt the "Electronic Trust Transfer Requisition" form, as described in this report.

B. BACKGROUND

5. On April 28, 1995, Convocation approved a recommendation from the Discipline Policy Committee that sections 14 and 15 of Regulation 708 (of the Revised Regulations of Ontario, 1990) be amended to permit members to use electronic means to transfer funds from their trust accounts where specified procedures are followed.
6. On November 29, 1996, Convocation, in the exercise of its authority under paragraphs 1 and 2 of section 63 of the *Law Society Act*, made a regulation to amend sections 14 and 15 of Regulation 708.
7. The regulation was approved by the Lieutenant Governor in Council, and on February 14, 1997, it was filed with the Registrar of Regulations (O. Reg. 47/97). The amended sections 14 and 15 of Regulation 708 came into force on February 14, 1997. The text of the amended sections 14 and 15 appears in Appendix 1 to this report.
8. Pursuant to new subsection (10.3) of section 14, a member may not transfer funds from a trust account by electronic means until specified conditions have been met. Paragraph 4 of subsection (10.3) requires the member (or other person) to sign an electronic trust transfer requisition "in a form prescribed by the rules" before the electronic transfer is initiated. Currently, there is no prescribed form of the electronic trust transfer requisition.

C. ANALYSIS

The Requirement for a Committee's Proposal to Convocation

9. The prescription of a form of the electronic trust transfer requisition involves an amendment to Rule 56 under the *Law Society Act* which provides for the use of forms prescribed by Convocation. The rule requires an amendment to provide for the use of the form of the electronic trust transfer requisition adopted by Convocation.
10. Pursuant to Rule 1 under the *Law Society Act*, amendments to the rules can be accomplished in only two ways:
 - By notice of motion given at the Convocation immediately preceding the Convocation at which the motion to amend the rules is made. (Notice has not been given in this case.)
 - By proposal in the report of a committee, followed by a motion in Convocation to adopt the proposal.¹

¹Please refer to Appendix 3 to this Report for the provisions of Paragraph 27 of subsection 62(1) of the *Law Society Act*, Section 16 of Regulation 708, Rule 1 and part of Rule 56 (subrules 56(1) to 56(5)).

11. Under the rules as currently worded, a committee proposal (effectively a recommendation) is the only way to introduce rule amendments to Convocation if notice of the amendment has not been formally given at the previous Convocation.

The Policy Governance Perspective

12. The staff implementation of the regulatory prescription requiring a form as described above is a "means" function.
13. As discussed above, however, the new forms require a "recommendation" of a committee of Convocation to Convocation. In such situations, the "ends/means" distinction in defining policy and its implementation cannot be strictly applied. The Policy Governance Model itself may have to be modified in situations where Convocation is exercising its delegated legislative function (to make regulations and rules) under the Law Society Act.²

The Committee's Proposals for Convocation's Consideration

Proposed Electronic Trust Transfer Requisition

14. It is proposed that the "Electronic Trust Transfer Requisition" contained in Appendix 2 to this report be prescribed.

Proposed Amendment to Rule 56

15. It is proposed that Rule 56 be amended by adding thereto a new subrule (6) as follows:

The electronic trust transfer requisition required to be signed by a member or other person under paragraph 4 of subsection 14(10.3) of the said Regulation 708 shall be included in the Electronic Trust Transfer Requisition which is appended to these rules.

Proposed Form of Motion for Convocation

16. If the Convocation agrees to adopt the Committee's proposal that the Electronic Trust Transfer Requisition should be prescribed, and that Rule 56 should be amended, it is proposed that the form of the motion for Convocation be as follows:

MOVED, pursuant to the authority granted by paragraph 27 of subsection 62(1) of the *Law Society Act*:

1. That Rule 56 be amended by adding the following subrule:
 - (6) The electronic trust transfer requisition required to be signed by a member or other person under paragraph 4 of subsection 14(10.3) of the said Regulation 708 shall be included in the Electronic Trust Transfer Requisition which is appended to these rules.

²Rule 1 (which prescribes the amending procedure) is currently under review to determine if an amending process more compatible with the new governance structure can be devised.

2. That the Electronic Trust Transfer Requisition be prescribed.

Options and Alternatives for Decision by Convocation

17. The Convocation must decide:

- whether to accept the Committee's proposal to Convocation that the form as drafted should be adopted, or whether changes are required
- whether to affirm the required rule amendment, and the language in the above amendment to adopt the form
- whether the language in the above motion reflects the required amendment to Rule 56.

DRAFT RULES OF THE DISCIPLINE HEARING PROCESS

A. NATURE AND SCOPE OF THE ISSUE

18. At the February 13, 1997 meeting, the Chair of the Committee struck a working group³ to review the existing discipline process rules of procedure, adopted by Convocation in October 1992. This issue was identified and prioritized in the issues list approved by Convocation on January 24, 1997.
19. Convocation requested that the Committee report on this matter at the April 25, 1997 Convocation.
20. The working group reported to the Committee on April 10, 1997 and tabled draft Revised Rules of the Discipline Hearing Process ("the Revised Rules"). The Committee, after making certain amendments to the Revised Rules, recommends that Convocation adopt them.

B. BACKGROUND

21. On October 23, 1992, Convocation adopted Rules of Procedure in Discipline Matters ("the current rules"). Over time, as changes and improvements were made to the process, it became apparent that a codification of all procedures should be undertaken.
22. A Background Paper prepared by Discipline Counsel, at Appendix 4, explains in some detail the requirement for this codification.

C. OPTIONS ANALYSIS

The Role Statement

23. Improvements to the process, through the Revised Rules, confirm the directives found in various parts of the Law Society's Role Statement, to the effect that:

³Gavin MacKenzie (Chair) and Niels Ortved, and Discipline Counsel, Janet Brooks, Rhonda Cohen, Georgette Gagnon and Glenn Stuart.

The responsibility of governance is the principle which legitimizes the authority which the Society exercises over its member, and prospective members, in respect of entry to the profession, standards, insurance requirements, professional conduct and discipline. (emphasis added)

...

...Activities which uphold the independence, integrity and honour of the legal profession, and programs designed to ensure that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct, insofar as they involve governance of the profession, can be said to fall squarely within the essential activities of the Law Society.

...

Many of the provisions of the *Law Society Act* and its regulations arise from the Society's obligation to uphold the integrity and honour of the legal profession - for example:

...

- the prescription of procedures to be followed in investigating and hearing complaints (emphasis added)

Overview of the New Rules

24. A Summary of the Revised Rules appears at Appendix 5, and explains that they are designed to update the current rules, largely by codifying informal procedures that have been developed to stream line the process but which are not explicitly referred to in the current rules.

25. The full text of the Revised Rules appears at Appendix 6.

The Requirement for Convocation to Adopt the Revised Rules

26. Although the *drafting* of procedural rules is essentially a "means" function (as a matter in the "means/ends" distinction of policy governance), there are two compelling reasons why Convocation should *implement* the rules by formally adopting them. One is procedural and the other policy related:

- a. The rule-making authority pursuant to s. 25.1 of the *Statutory Powers Procedure Act* ("SPPA") requires that rules be promulgated by "the tribunal".⁴ For this purpose, both Convocation and the Discipline Committee are tribunals and each must adopt the Revised Rules.⁵
- b. Publicly adopting the rules would provide the imprimatur of the governors of the Society on an important feature of a process that is highly visible to the profession and the public.

⁴S. 25.1 reads: "A tribunal may make rules governing the practice and procedure before it."

⁵Rule 34(1) under the *Law Society Act* states that: "The members of the Discipline Committee shall be: 1. The Treasurer. 2. Every elected bencher. 3. Every lay bencher. 4. Such former Treasurers who are benchers pursuant to section 14 of the *Law Society Act* and who have been appointed in Convocation to serve as members of the Discipline Committee." Accordingly, it is suggested that for the purpose of making the new rules, the benchers sit as Convocation and as the Discipline Committee, as appropriate.

Policy Discussion

27. The Revised Rules address the following policy considerations, more fully considered in the Background Paper and Summary:
- a. Rules of the discipline hearing process should accurately reflect, or give notice to members of actual procedures developed over time and which at present govern the discipline process;
 - b. Rules should adequately inform members, student members, the profession and the public of the process before the discipline hearing panels and Convocation;
 - c. A codification of current practice, by providing certainty about the procedures, will enhance the process for the Society, including benchers and staff, the profession and the public.

The Committee's View

28. The Committee is confident that the Revised Rules are both comprehensive and practical, and reflect the discipline hearing process envisaged by the current rules together with the improvements that have taken place since their adoption in 1992.
29. The Committee therefore endorses the adoption of the Revised Rules by Convocation and the Discipline Committee.
30. The adoption of Revised Rules should be preceded by a formal rescission of the current rules. This should include rescission of the Rules made by Convocation under the SPPA on February 23, 1996 which deal with interim suspensions. One of the revised rules (Rule 6) incorporates these provisions.
31. The following motion is suggested:

MOVED, that

1. Convocation rescind the Discipline Process Rules of Procedure adopted by Convocation on October 23, 1992 and the Rules made pursuant to s. 25.1 of the *Statutory Powers Procedures Act*, R.S.O. 1990 c. S.22 as amended, on February 23, 1996, and
2. Convocation make the rules designated as the Rules of the Discipline Hearing Process, pursuant to s. 25.1 of the *Statutory Powers Procedures Act*, R.S.O. 1990 c. S.22 as amended, attached as Appendix 6 to this Report; and
3. The Discipline Committee make the rules designated as the Rules of the Discipline Hearing Process, pursuant to s. 25.1 of the *Statutory Powers Procedures Act*, R.S.O. 1990 c. S.22 as amended, attached as Appendix 6 to this Report.

Options and Alternatives for Decision by Convocation

32. Convocation must decide:
- . Whether to adopt the Revised Rules as presented by the Committee;

- . Whether the Revised Rules require further review and/or amendment. If this option is chosen, the Committee requests that Convocation specifically direct what further work is required.

INFORMATION

A. REPORT ON THE COMPLAINTS DEPARTMENT

33. As a result of a motion⁶ passed at the June 1996 Convocation respecting complaints investigation procedures, after defeat of the Bobesich/Swaye motion on a fee for filing complaints, the Treasurer requested that the Committee consider the nature and extent of any review arising from the motion.
34. The Committee reviewed a report prepared by Scott Kerr⁷, the director of the Complaints Department, in response to the motion and the Committee's request for information on the complaints process.
35. The Committee recognized that Project 200, the management initiative involving an in-depth study and analysis of operational efficiencies, identification of process re-design principles and an implementation strategy, encompassed a review of activities associated with the screening and disposition of complaints and the discretion associated with those decisions.
36. The Committee agreed that any policy development related to the subject of the motion from Convocation should await the results of the process re-design phase of Project 200, after which an updated report is to be provided to the Committee by Mr. Kerr. It is anticipated that that report will be issued in the early fall of 1997.

B. DUTY COUNSEL AT DISCIPLINE HEARINGS

37. The Committee is currently examining the feasibility of a *pro bono* duty counsel program for lawyers appearing before discipline hearing panels. The current duty counsel program applies only to Convocation.
38. The Committee reviewed a staff discussion paper based on some key issues the Committee identified at its February 13, 1997 meeting, as follows:
 - the experience of other law societies and other professional organizations
 - the cost of administering the program
 - the structure of the program
 - the number of hearings or days of hearings a year for which the program should be available

⁶The Treasurer's statement from the transcript of Convocation, June 28, 1996 reads: "...that the whole matter of discretion in the complaints department dealing with frivolous complaints and related matters be referred for policy options to either a committee or task force, as I determine appropriate, and come back to Convocation.

⁷Benchers wishing to obtain Mr. Kerr's current report to the Committee may contact the Policy Secretariat at 947-3415.

25th April, 1997

- the "time line" issue, or when in the discipline process should duty counsel be available
 - whether duty counsel become "seized" in a matter
 - limitations of duty counsel, or the scope of their responsibilities
 - the desire of lawyers to act as *pro bono* counsel in discipline proceedings
 - any conflict in administering a program for the Law Society.
39. Two key questions arising from the discussion were:
- a. What type of model should be used for such a program: a legal aid or criminal duty counsel model?
 - b. Who should design and deliver the program?
40. As the Committee continues its review and prepares for its scheduled policy report to Convocation on this subject in May or June, 1997, it will be contacting five other legal organizations⁸ for input on the need for such a program, design issues and how or by whom the program should be run.

C. WORKING GROUP ON TECHNOLOGY IN THE DISCIPLINE PROCESS

41. The Committee's working group⁹ struck to study the above topic has held two meetings to date and is continuing with its review of how and to what extent technology can or should play a part in the exercise of the Law Society's governance role through the discipline process.
42. The working group plans to provide its report to the Committee in May 1997.

D. OPERATIONS OF THE SECRETARIAT DEPARTMENTS

43. Richard Tinsley, the Secretary, reported on two items:

Hiring of Senior Discipline Counsel

44. Lesley Cameron, one of the Society's discipline counsel, accepted the position of Senior Discipline Counsel effective Monday, April 14, 1997.
45. Ms. Cameron has served for the past two years as Discipline Counsel in the Discipline Department. In this position, she demonstrated excellent judgment and a high level of organizational and negotiation skills. She brings to her new duties these qualities and the wide variety of litigation experience she gained before joining the Society.

⁸The Canadian Bar Association, The Advocates' Society, County and District Law Presidents Association, Metropolitan Toronto Law Association and Criminal Lawyers Association.

⁹Paul Copeland (Chair), Hope Sealy and Stuart Thom, assisted by staff members Janet Brooks and Jim Varro.

Hiring of New Discipline Counsel

46. The Society's search for new counsel in the discipline department, as a result of Neil Perrier's move to the College of Physicians and Surgeons of Ontario, continues. Final interviews have been held and it is anticipated that a decision will be made imminently on one of the candidates.

APPENDIX 1

Regulation 708
Sections 14 and 15, as amended
(in force February 14, 1997)

Amendments are in boldface type.

14.—(1) Every member who receives money in trust for a client, except money hereinafter expressly exempted from the application of this section, shall forthwith pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or registered trust corporation to be kept in the name of the member or in the name of the firm of which he or she is a member or by which he or she is employed and designated as a trust account. R.R.O. 1990, Reg. 708, s. 14 (1); O. Reg. 83/96, s. 1.

(2) A member may keep one or more trust accounts as he or she thinks fit.

(3) Trust money is money received by a member that belongs in whole or in part to a client or that is to be held on the client's behalf or to the client's or another's direction or order, and includes money advanced to a member on account of fees for services not yet rendered or money advanced on account of disbursements not yet made.

(4) There shall be paid into a trust account only,

- (a) trust money;
- (b) money that may by inadvertence have been drawn from the trust account in contravention of this section; and
- (c) money paid to a member representing in part money belonging to a client and in part money belonging to the member where it is not practicable to split the payment, but money belonging to the member shall be drawn from the trust account without delay.

(5) Money need not be paid into a trust account,

- (a) that a client in writing requests a member to withhold from the trust account or to deposit elsewhere;
- (b) that a member pays into a separate account opened or to be opened in the name of a client or some person named by that client or the duly authorized agent of that client; or

25th April, 1997

- (c) that in the ordinary course of business upon its receipt is paid forthwith in the form in which it is received to or on behalf of the client,

but the handling of such money shall be shown in the books and records of the member.

- (6) Money shall not be paid into a trust account,
 - (a) that belongs entirely to the member or to others in his or her firm including an amount received as a general retainer for which the member is not obligated either to account or to render services;
 - (b) that is received by the member on account of fees for which a billing has been delivered or for services already performed for which a billing is delivered forthwith thereafter or is received to reimburse the member for disbursements made or expenses incurred on behalf of a client.

(7) Money on deposit in a trust account to which the member becomes entitled shall reasonably promptly thereafter be drawn from the trust account in accordance with subsection (8).

- (8) Money shall not be drawn from a trust account other than,
 - (a) money properly required for payment to or on behalf of a client;
 - (b) money required to reimburse the member for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client;
 - (c) money properly required for or toward payment of the member's fees for which a billing or other written notification has been delivered;
 - (d) money that is directly transferred into another trust account and held on behalf of a client;
 - (e) money that may by inadvertence have been paid into the trust account in contravention of this section.

but in no case shall the money so drawn exceed the unexpended balance of the money held in the trust account for the client.

(9) Money drawn from a trust account under clause (8)(b) or (c) shall be drawn only,

- (a) by a cheque drawn in favour of the member; or
- (b) by a transfer to a bank account that is in the name of the member and is not a trust account.

(10) A cheque drawn on a trust account shall not be,

- (a) made payable either to cash or to bearer; or

- (b) signed by a person who is not a member except in exceptional circumstances, and except when the person is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all the trust accounts on which signing authority has been delegated to the person. R.R.O. 1990, Reg. 708, s. 14 (2-13).

(10.1) Money drawn from a trust account under subsection (8) may be drawn by electronic transfer.

(10.2) Money drawn from a trust account by electronic transfer shall be drawn only in accordance with subsections (10.3) to (10.7).

(10.3) Money shall not be drawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the member must be one that does not permit an electronic transfer of funds unless,
 - i. one person, using a password or access code, enters into the system the data describing the details of the transfer, and
 - ii. another person, using another password or access code, enters into the system the data authorizing the financial institution to carry out the transfer.
2. The electronic transfer system used by the member must be one that will produce, not later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received.
3. The confirmation required by paragraph 2 must contain,
 - i. the number of the trust account from which money is drawn,
 - ii. the name, branch name and address of the financial institution where the account to which money is transferred is kept,
 - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
 - iv. the number of the account to which money is transferred,
 - v. the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and
 - vi. the time and date that the confirmation from the financial institution is sent to the member.
4. Before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic trust transfer system, an electronic trust transfer requisition in a form prescribed by the rules must be signed by,
 - i. a member, or

25th April, 1997

ii. in exceptional circumstances, a person who is not a member if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

5. The data entered into the electronic trust transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the electronic trust transfer requisition.

(10.4) Paragraph 1 of subsection (10.3) does not apply to a member who practises law without another member as a partner and without another member or person as an employee, if the member himself or herself enters into the electronic trust transfer system both the data describing the details of the transfer and the data authorizing the financial institution to carry out the transfer.

(10.5) In exceptional circumstances, the data referred to in subsection (10.4) may be entered by a person other than the member, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

(10.6) Not later than the close of the banking day immediately after the day on which the confirmation required by paragraph 2 of subsection (10.3) is sent to a member, the member shall,

- (a) produce a printed copy of the confirmation;
- (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;
- (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and
- (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

(10.7) In exceptional circumstances, the tasks required by subsection (10.6) may be performed by a person other than the member, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person. O. Reg. 47/97, s. 1.

(11) Money other than money permitted by subsection (8) shall not be drawn from a trust account unless Convocation specifically authorizes in writing its withdrawal.

(12) At all times a member shall maintain sufficient balances on deposit in his or her trust account or accounts to meet all his or her obligations with respect to money held in trust for clients.

(13) For the purposes of subsections (8) and (12), cash, cheques negotiable by the member, cheques drawn by the member on the member's trust account and credit card sales slips in the possession and control of the member shall be deemed from the time the member receives such possession and control to be money held in a trust account if the cash, cheques or credit card sales slips, as the case may be, are deposited in the trust account not later than the following banking day. R.R.O. 1990, Reg. 708, s. 14 (11-13).

RECORDS

15.-(1) Every member shall maintain books, records and accounts in connection with his or her practice to record all money and other negotiable property received and disbursed, and as a minimum requirement every member shall maintain,

- (a) a book of original entry showing the date of receipt and source of money received in trust for each client and identifying the client on whose behalf the trust money is received;
- (b) a book of original entry showing all disbursements out of money held in trust for each client and showing each cheque number, the date of each disbursement, the name of each recipient, and identifying the client on whose behalf each disbursement is made out of money held in trust;
- (c) a clients' trust ledger showing separately for each person on whose behalf money has been received in trust all such money received and disbursed and any unexpended balance;
- (d) a record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made;
- (e) a book of original entry showing the date of receipt and source of all money received other than trust money;
- (f) a book of original entry showing all disbursements of money other than trust money and showing each cheque or voucher number, the date of each disbursement, and the name of each recipient;
- (g) a fees book or chronological file of copies of billings showing all fees charged and other billings to clients, the dates such charges are made, and identifying the clients so charged;
- (h) a record showing a comparison made monthly of the total of balances held in the trust account or accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the books and records together with the reasons for any differences between the totals and supported by,
 - (i) a detailed listing made monthly showing the amount of trust money held for each client and identifying each client for whom trust money is held, and
 - (ii) a detailed reconciliation made monthly of each trust bank account, and

such detailed listings and reconciliations shall be retained as records supporting the monthly trust comparisons;

25th April, 1997

- (i) a record showing all negotiable or other valuable property, other than money, held in trust from time to time for all clients; and
 - (j) bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and general accounts. R.R.O. 1990, Reg. 708, s. 15 (1).
 - (k) signed electronic trust transfer requisitions and signed printed confirmations of electronic transfers of trust funds. O. Reg. 47/97, s. 2.
- (2) The books, records and accounts required to comply with subsection (1),
- (a) shall be entered and posted currently at all times, and the trust comparison required by clause (1) (h) shall be made monthly within fifteen days from the effective date of each comparison;
 - (b) shall be entered and posted in ink or a duplication thereof, or by machine, and shall be preserved for at least the six-year period previous to the most recent fiscal year-end of the member, with the exception of trust cash receipt and disbursement books of original entry and the books and records required by clauses (1) (c), (h) and (i) which shall be preserved for at least ten years. R.R.O. 1990, Reg. 708, s. 15 (2).

APPENDIX 2

ELECTRONIC TRUST TRANSFER REQUISITION

Required by paragraph 4 of subsection 14(10.3) of Regulation 708 (of the Revised Regulations of Ontario, 1990) as amended

Requisition # _____

Amount of Funds to be Transferred: _____ \$

Re: Client - Name: _____
File Reference Number: _____

Reason for Payment: _____

Trust Account to be Debited: _____

Name of Financial Institution: _____

Account Number: _____

Name of Recipient: _____

25th April, 1997

Account to be Credited
 Name of Financial Institution: _____
 Branch Name and Address: _____

 Account Number: _____

Person Requisitioning Electronic Trust Transfer: _____
 (Name - Print)

 (Date) (Signature)

Additional Transaction Particulars:
 This section should be completed following entry of transfer details (by the person entering the details of the transfer) and following authorization of transfer (by the person authorizing the transfer at the computer terminal).

Person Entering Details of Transfer:

 (Name-Print) (Signature)

Person Authorizing Transfer at Computer Terminal:

 (Name-Print) (Signature)

APPENDIX 3

EXTRACTS FROM THE *LAW SOCIETY ACT* AND RULES

EXTRACTS FROM THE *LAW SOCIETY ACT*

RULES

62.—(1) Subject to section 63, Convocation may make rules relating to the affairs of the Society and, without limiting the generality of the foregoing,

27. prescribing forms and providing for their use, except the form of summons referred to in subsection 33 (10).

EXTRACTS FROM THE RULES

PROCEDURES AS TO RULES

1. (1) Where it is proposed to make, amend or revoke any rule and the proposal is not made in the report of any committee which has been adopted by Convocation, the proposal shall not be acted upon unless notice of motion to that effect was given at the Convocation immediately preceding the Convocation at which the motion is made.

(2) Where in the report of a committee it is proposed that a rule be made, amended or revoked, no notice of motion to that effect need be given, but a motion specifying the proposal may be made immediately after the adoption by Convocation of that part of the committee's report.

....

FORMS

56. (1) The notice of intention to apply for permission to resign referred to in subsection 12(2) of Regulation 708 of the Revised Regulations of Ontario, 1990, shall be in Form 1.

(2) The certificate required to be filed with the Society by a member who meets the requirements of clauses (a) and (b) subsection 16(3) of the said Regulation 708 shall be included in the Membership Information Form appended to these rules.

(2.1) The certificate required to be filed with the Society by a member who meets the requirements of clause (c) of subsection 16(3) of the said Regulation 708 shall be included in the Private Practitioner Form which is appended to these rules.

(2.2) The certificate required to be filed with the Society by a member under subsection 16(2) of the said Regulation 708 shall be included in the Private Practitioner Form which is appended to these rules.

(3) The report of a public accountant that is required to be filed with the Society by a member under subsection 16(2) of the said Regulation 708 shall be the Public Accountant's Report to Lawyer which is appended to these rules.

(4) The investment authority required to be maintained by a member under paragraph 15.2(1)(a) of the said Regulation 708 shall be in Form 4.

(5) The report on investment required to be maintained by a member under paragraph 15.2(1)(b) of the said Regulation 708 shall be in Form 5.

APPENDIX 4

PROFESSIONAL REGULATION COMMITTEE WORKING GROUP

BACKGROUND PAPER ON THE REVISED RULES OF THE DISCIPLINE HEARING PROCESS

BACKGROUND PAPER:

Revised Rules of the Discipline Hearing Process

April 25, 1997

Table of Contents

- 1. Introduction 1
 - Concerns with Existing Rules of Procedure 1
 - New Areas to be Addressed by Rules 2
 - Jurisdiction to Establish New Rules 2
 - Corresponding Procedural Changes outside Rules 3
- 2. Proposed Changes to Existing Rules 4
 - I. Jurisdiction of Single Benchers Assignment Tribunal 4
 - Issue of Concern 4
 - Proposed Action 6
 - II. Procedural Management Benchers 7
 - Issue of Concern 7
 - Proposed Action 7
 - III. Tracking of Complaints and the HAT 7
 - Issue of Concern 7
 - Proposed Action 8
 - IV. Other Hearing-Level Procedure Issues 8
 - Notice under Current Rule 16 8
 - Law clerks and agents 9
 - Lay benchers 9
 - V. Convocation Procedure 10
 - Issues of Concern 10
 - Proposed Action 10
 - Jurisdiction of Convocation Assignment Tribunal 11
 - VI. Review of Assignment Tribunal Decisions 11
 - Issue of Concern 11
 - Proposed Action 12
 - VII. Deference Policy 12
 - Limitations of Current Rule 12
 - Proposed Action 13
- 3. Other Existing Procedural Guidelines 14
 - In Camera Proceedings 14
 - Interim Suspensions 14
 - Other Practice Directions 14
 - Pre-hearing Conferences 14
- 4. New Provisions Arising from SPPA 16
 - Background 16
 - I. General Rules 16
 - II. Motions 17
 - III. Disclosure 17
 - IV. Notice of Hearing 17
 - V. Written Hearings 17
 - VI. Electronic Hearings 18
 - VII. Conduct of Hearings 18
 - Recording and language of hearings 18
 - Exclusion of witnesses 18
 - Documentary Evidence 19
 - VIII. Decisions and Orders 19
 - IX. Review of Orders 19
- APPENDIX "A": Current Rules 21

Introduction

On January 24, 1997, Convocation approved the review of the Rules of Procedure in Discipline Matters ("Current Rules"), which had been adopted by Convocation on October 23, 1992. This review is to be undertaken by a Working Group of this Committee and the Committee is to report to Convocation on April 25, 1997. A copy of the Current Rules is attached at Appendix "A".

Concerns with Existing Rules of Procedure

The Current Rules do not accurately reflect, or give notice to Solicitors of, the actual procedures that have been developed over time to govern the discipline process.

- For example, the Current Rules do not reflect the following:
 - the institution of the Hearings Assignment Tribunal ("HAT");
 - the institution of the Convocation Assignment Tribunal ("CAT");
 - the availability of single bencher hearings in certain cases; and
 - the procedure for interim suspension orders.
- In addition, there are aspects of the Current Rules which have never been implemented in practice due to difficulties in their application given the realities of the process - in particular, the tracking of cases.
- Finally, the Current Rules did not specifically supplant other rules and practice directions that existed prior to the adoption of the Current Rules, resulting in a collection of rules, practice directions and guidelines, lacking a cohesive theme or direction.

The effect of these concerns on the discipline process is two-fold:

- The cumbersome nature of certain aspects of the Current Rules together with the failure of the Current Rules to provide for certain procedures, results in a system that fails to enhance the efficiency of or simplify the discipline process for the Society, Solicitors charged and their counsel, and the public, including complainants. A key purpose of the rules is to notify Solicitors and the public involved in the discipline process of existing procedures. This purpose is not met when the Current Rules and day-to-day practice do not accord.
- Certain of the Current Rules may fetter the proper exercise of the Law Society's disciplinary jurisdiction and mandate. For example, where the Current Rules are not complied with because of impracticality, the Law Society's process may be nevertheless challenged.

New Areas to be Addressed by Rules

The Current Rules should be amended, or supplemented, to give effect to the powers granted to statutory tribunals by the amendments to the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("SPPA"), that came into effect on April 1, 1995.

Jurisdiction to Establish New Rules

- Among the other significant changes introduced in April 1995 by the amendments to the *SPPA*, section 25.1 of the *SPPA* now permits a tribunal to make rules to govern the practice and procedure before it¹. This section eliminates any jurisdictional issue that may have existed previously. The Law Society may now promulgate a set of binding procedural rules pursuant to this provision, and it is this jurisdiction that Convocation, and the Discipline Committee, ought to exercise.²
- Prior to the 1995 amendments to the *SPPA*, Convocation only had authority to effect procedural rules within the parameters of its common law jurisdiction to control its own process. Although Convocation had (and retains) a significant rule-making jurisdiction under s. 62 of the *Law Society Act*, this provision does not confer jurisdiction to make rules governing the discipline process. Section 63 of the *Act* requires rules ancillary to the discipline process to be enacted by regulation. Thus, any jurisdiction to establish the Current Rules flowed from the common law principle. The precise limits on the common law jurisdiction were not clear, and doubt existed as to whether binding procedural rules, such as the Current Rules, could be adopted by a tribunal³.

Corresponding Procedural Changes outside Rules

- In addition to changes to the Current Rules, the current package of material sent to Solicitors and their counsel on service of Complaints requires amendments. Some of these amendments will reflect changes to the rules, such as the deletion of references to the tracking of Complaints. Other changes are required to correct shortcomings in the current package; for example, in order to comply with the Regulation, a summons should be sent to solicitors requiring their attendance at the hearing, or first return date, of the Complaint.

Proposed Changes to Existing Rules

I. Jurisdiction of Single Bencher Hearings Assignment Tribunal

Issue of Concern

- Currently, the HAT operates as an assignment court. Concern has been raised regarding the HAT's jurisdiction to consider contested adjournments and other contested interlocutory or procedural matters. Subject to certain administrative steps being taken, we are satisfied that the HAT can exercise such jurisdiction.

¹ One important note in this regard is that s. 25(4) of the *SPPA* requires the tribunal to publish the rules in English and French. Thus, any rules which the Law Society wishes to employ need to be translated.

² Because the rules must be promulgated by the tribunal, under the *SPPA*, and both the Discipline Committee and Convocation are "tribunals" in this regard, the rules of procedure must be adopted by both bodies.

³ In particular, an opinion was provided in 1993 by Law Society research staff wherein the author concluded that the Current Rules were likely not binding due to a lack of jurisdiction in Convocation to promulgate binding rules.

- Our analysis is summarized as follows:

The issue of quorum of the Discipline Committee is addressed in section 9 of Regulation 708 pursuant to the *Law Society Act*. At the time of the creation of the HAT, a quorum of the Discipline Committee was three benchers, except for an *uncontested* adjournment, in which case a quorum was one *non-ex officio* bencher.

Recently, the Regulation was amended to provide for a quorum of one bencher to hear Complaints alleging certain enumerated misconduct (including, for example, fail to file and fail to reply to the Law Society) or where the parties consented to a single bencher hearing the matter. A HAT bencher may therefore adjudicate contested procedural matters in relation to those matters that could be adjudicated on their merits by a single bencher or in other cases where the parties consented to the HAT determining the issue. In all other cases, the HAT would not have jurisdiction to hear the matter.

The issue is now resolved by section 4.2 of the *SPPA* (as proclaimed on April 1, 1995).⁴ This provision provides as follows:

[a] procedural or interlocutory matter in a proceeding may be heard and determined by a panel consisting of one or more members of the tribunal, as assigned by the chair of the tribunal.

- This provision can be applied to the Society's discipline process, as follows:

It is first necessary to identify the "tribunal" which may exercise this jurisdiction. A "committee of Convocation" is charged with the responsibility under s. 33(1) of the *Law Society Act* to hear evidence and reach "the decision that the person is guilty" of professional misconduct; this is a "statutory power of decision" within the terms of the *SPPA*.⁵ The Committee's decision on the issue of professional misconduct (or conduct unbecoming a barrister and solicitor) is the condition precedent to Convocation exercising its disciplinary authority under s. 34 of the *Law Society Act*. Section 8 of Regulation 708, and Rule 34⁶, under the *Law Society Act* define this committee of Convocation to be the Discipline Committee. Consequently, the Discipline Committee is a "tribunal" within the meaning of the *SPPA* because it exercises this statutory power of decision.⁷

⁴It is worth noting that while this provision can permit the Discipline Committee to convey the necessary jurisdiction to the HAT, this provision was not in effect when the HAT was first established.

⁵See *Re Stone and Law Society of Upper Canada* (1979), 26 O.R. 166 (Div. Ct.) at p. 169

⁶ Amended September 27, 1996.

⁷ *Re Stone and Law Society of Upper Canada, supra*. See also *Re Emerson and Law Society of Upper Canada* (1983), 44 O.R. 729 (H.C.J.), wherein it was established that the Discipline Committee, in addition to Convocation, was a tribunal under the *Judicial Review Procedures Act*, the scope of which is defined in terms similar to those in the *SPPA*. By analogy, if the Discipline Committee is a tribunal to which the *JRPA* applies, it must be a tribunal to which the *SPPA* applies.

25th April, 1997

Although section 9(3) of Regulation 708 provides that three benchers constitute "a quorum of the Discipline Committee" for the purposes of a hearing of a Complaint, "Discipline Committee" is defined in Rule 34 under the *Law Society Act* to consist of the Treasurer, every elected and lay benchers and every former Treasurer; that is, every bencher other than the *ex officio* benchers. Thus, the "tribunal" for the purposes of the *SPPA* is actually the full Discipline Committee rather than any particular three member panel of the Committee. It follows from this that the Chair of the Discipline Committee has authority under s. 4.2 of the *SPPA* to assign a member of the Discipline Committee, namely any other bencher, to hear and determine procedural and interlocutory matters arising from matters, that is, Complaints, which are before the Discipline Committee. This would include all Complaints which are at a point in the process between the issuance of a Complaint and the commencement of a hearing before a panel of the Discipline Committee.⁸

Consequently, all that is required to delegate to the HAT the jurisdiction created by s. 4.2 of the *SPPA* is for the Chair of the Discipline Committee to formally assign one or more benchers the authority which a Discipline Committee could exercise in all, or some, procedural or interlocutory matters.

Proposed Action

We submit that it would be appropriate for the Chair to delegate additional powers to the HAT but restrict that delegation to matters which do not, typically, require the broader consideration of a three bencher panel. The assignment of specific matters to the HAT also avoids the potentially vague issue of what is a procedural matter and what is a substantive matter. Thus, we suggest that the HAT be assigned responsibility for the following procedural matters:

- Setting of hearing dates (a matter of course following the issuance of a Complaint);
- Adjournment requests, either with or without conditions;
- Motions requesting an abridgement of any time frame defined in the rules or a prior order of the HAT;
- Motions to have the hearing held other than in Toronto;
- Motions relating to the conduct of the hearing, such as requests for an electronic hearing or the form of evidence at the hearing; and,
- Motions relating to the holding of pre-hearing conferences.

Matters which are not specifically reserved to the HAT, and motions of a more substantive nature, should be reserved to a three member Committee (or, where the hearing into a Complaint can be held before a single bencher, a single bencher Committee). For the most part, these matters should be heard prior to the scheduled hearing into the Complaint so that the time reserved for the hearing on the merits is not wasted:

- Motions seeking a stay of proceedings based on an alleged abuse of process;
- Motions which challenge the jurisdiction of the Law Society to conduct a hearing;

⁸ Once a hearing before a panel of the Discipline Committee commences, that quorum becomes the "committee of Convocation" hearing the particular Complaint and assumes jurisdiction over that Complaint from the entire Discipline Committee. Thus, procedural matters would need to be determined by that panel.

- Motions relating to matters of disclosure;
- Removal of counsel or an agent;
- Motions by a third party for standing in a discipline proceeding;
- Any matter referred to a full Committee by a single bencher or HAT; and,
- Any matter not specifically assigned to the HAT or the Committee hearing a Complaint.

However, matters which are linked to the evidence that will be adduced at the hearing, should be reserved for the Committee hearing the Complaint:

- Motions relating to constitutional issues;
- Motions to hold all or part of a hearing *in camera*;
- Motions for the exclusion of witnesses; and,
- Once the hearing commences, any matter otherwise reserved to the HAT.

It is also clear that the Committee hearing the Complaint has a limited jurisdiction, where necessary, to review an interlocutory decision of another Committee or the HAT.

It is believed that this division will encourage the efficient use of bencher and Law Society resources by allowing a single bencher, the HAT, to consider the full range of purely procedural matters, while ensuring that matters having a significant substantive element are placed before a Committee or the Committee hearing the Complaint.

II. Procedural Management Bencher

Issue of Concern

- The position of Procedural Management Bencher was designed to introduce an adjudicator into the pre-hearing phase of Complaints who could resolve procedural matters and ensure that matters proceeded in a timely manner. Aspects of this position have been made redundant by the introduction of the HAT, which exercises many of the same functions invested in the Procedural Management Bencher by the Current Rules.
- The HAT may provide a preferable adjudicative forum as it is readily available to all parties and sits in public on regularly scheduled dates.
- In addition, many of the functions of the Procedural Management Bencher are exercised by pre-hearing benchers, particularly when the pre-hearing is used in conjunction with the new authority to hold single bencher discipline hearings.

Proposed Action

- The position of Procedural Management Bencher should be eliminated in favour of the formalization of the position of HAT to adjudicate certain interlocutory and procedural matters, as outlined above.

III. Tracking of Complaints and the HAT

Issue of Concern

- The tracking of formal Complaints so that they are assigned to one of Fast (90 day), Standard (4 month) or Complex (6 month) Tracks is not viable. In our view, these tracks have become redundant in light of newer procedures such as the HAT and internal case management procedures in place within the Discipline Department.
- The tracks were instituted to respond to the lack of time limitations governing the discipline process. At the time, a significant number of cases had developed substantial inertia in the process. It was the view in 1992 that this created two problems which the tracks were intended to address: "first, the process provides for no objective basis for measuring and circumscribing delay; second, the process is not readily amenable to the imposition of a computer system designed to manage and move the caseload."⁹
- Currently, the issue of delay in the processing of cases is effectively dealt with by the HAT. Each case is scrutinized by the HAT, and the tolerable level of delay is assessed in a forum uniquely appropriate to assess the special circumstances of each case. The introduction of the HAT to the discipline process provides a mechanism that actively moves cases through the process, in contrast to the tracking system which provided a limitation period without a mechanism for achieving it. Of equal importance to the timely movement of Complaints is the administrative system implemented internally by the Discipline Department to efficiently schedule hearing dates and move caseloads. These measures have resulted in the elimination of the backlog at the Committee hearing level, in the reduction of last-minute adjournment requests, and in the effective use of hearing panel time.
- Experience has shown that the requirements in the Current Rules that a fast track matter *shall* be heard within 90 days of issuance and that a standard track matter *shall* be heard within four months of issuance are impractical for both the Society and the Solicitor. More importantly, Discipline Committees do not consider the tracks in the course of their adjudication of Complaints. As a result, they have no meaningful function in the discipline process.

Proposed Action

- The tracking system should be eliminated. In its place, the HAT should be institutionalized in amended rules conferring jurisdiction on it to adjudicate specified interlocutory and procedural matters. In addition, as is the current practice, all newly issued Complaints would be first returned before the HAT to set a date. (The only exceptions in this regard would be where it is urgent that the matter go directly to hearing, or there is another Complaint already set down for hearing with which the new Complaint will be heard.)

⁹ Report to Convocation of the Discipline Policy Committee, October 1992

IV. Other Hearing-Level Procedure Issues

Notice under Current Rule 16

- Rule 16 of the Current Rules provides for a notice to be provided to Solicitors when they are served with a Complaint. The intention of this notice is to advise solicitors of the requirement to lead all evidence before the Discipline Committee because Convocation will not consider new evidence generally. The notice also advises solicitors that Convocation reserves the right to impose any penalty it considered to be appropriate. Unfortunately, the original version of this Rule did not express this intention with absolute clarity. This issue crystallized in a matter before Convocation in January 1996, in which a Solicitor sought to adduce substantial evidence before Convocation¹⁰. Concerns were raised by Convocation that this evidence had not been adduced before the Discipline Committee, and, in turn, that the wording of the notice pursuant to Rule 16 did not clearly articulate the position that all available evidence was to be led at the Committee level.
- On February 23, 1996, Convocation adopted revisions to Rule 16. This revision, and any necessary clarifications, should be incorporated into revised rules to ensure that Solicitors are notified that they will generally be precluded from adducing new evidence before Convocation.

Law clerks and agents

- The Current Rules provide that a litigation clerk may appear on fast track matters. This provision is unnecessary in light of section 10 of the *SPPA* which provides that a party may be represented by counsel or agent.
- An issue which sometimes arises is whether an agent may be excluded from acting in a proceeding. Given sections 10 and 25.1(3) of the *SPPA*, a general prohibition on particular persons (such as disbarred or suspended lawyers) acting as agents or agents acting on certain matters (such as matters before Convocation or matters before Discipline hearing panels) cannot be effected in the absence of a statutory amendment to either the *SPPA* or the *Law Society Act*.
- The Discipline Committee and Convocation do retain the jurisdiction (under section 23 of the *SPPA*) to exclude a particular agent on a particular matter. This authority has been exercised recently to exclude, for the second time, a disbarred lawyer from appearing on behalf of a Solicitor in discipline proceedings¹¹.

Lay benchers

- The Current Rules provide that one member of three bench panels of the Discipline Committee considering standard and complex track matters should be a lay bencher.

¹⁰ *Alan Stanley Harries*

¹¹ Application by disbarred lawyer H. Kopyto to represent Solicitor A.M. Codina was denied by a Discipline Committee. The Divisional Court dismissed the Solicitor's application for judicial review. The Solicitor's application for leave to appeal the order of the Divisional Court is pending. A further application by lawyer H. Kopyto to represent Solicitor A.M. Codina in other proceedings was denied by a Discipline Committee in July 1996. The Solicitor's application for Judicial Review of that decision is pending.

- While, as a matter of policy, this arrangement is to be encouraged, it is not followed in practice and, accordingly, should not be mandated by procedural rules. In the absence of the proposed statutory amendments increasing the number of lay benchers, it is not viable to require a lay bencher to sit on all hearing panels.
- The consequent difficulty of incorporating this policy into the rules of procedure is that, as with tracking of complaints, it could provide the basis for a jurisdictional challenge if it is not complied with in all cases. As a result, it is our view that this is best left as a matter of policy only at this time.

V. Convocation Procedure

Issues of Concern

There are three principal concerns with the procedure set out in the Current Rules regarding matters where Reports and Decisions have been rendered and which are awaiting consideration by Convocation.

- First, the procedure in the Current Rules is excessively cumbersome and imposes procedural requirements which do not facilitate the efficient presentation of matters before Convocation. The practical consequence of this is that the Rules are now observed in the breach.
- Second, many of the procedures in the Current Rules depend upon whether Convocation will "hold a hearing". The term "hearing" is extremely broad, encompassing everything from a full trial-type hearing, on a *de novo* basis, to an opportunity to make submissions on the Report and Decision before Convocation. Given our view that a "hearing" of some type is always held in Convocation, it is undesirable to indicate in the rules that predicate the procedures to be followed on whether a "hearing" is required. These references obscure the actual nature and scope of the proceedings before Convocation.
- Finally, the Current Rules appear to permit a significant latitude to adduce new evidence before Convocation. This ambiguity, along with the previous difficulties in the wording of the Notice under Rule 16 of the Current Rules, creates a situation in which a substantial amount of new evidence may be placed before Convocation. This runs counter to the intention that proceedings before Convocation are *not* hearings *de novo*.

Proposed Action

- The rules of procedure should be simplified and amended to incorporate the role of the CAT.
- In addition, the rules should be clarified so that parties would generally be precluded from adducing new evidence before Convocation. Although it was initially the view of staff that the rules should require a party seeking to tender new evidence before Convocation to satisfy the same test as is applied when a party seeks to adduce fresh evidence on an appeal, the Working Group concluded that the definition of the threshold test should be left to be defined in the jurisprudence.
- Given the significance of the consequences of such a motion, motions for leave to tender fresh evidence should be brought before Convocation, and not the CAT.

Jurisdiction of Convocation Assignment Tribunal

A simpler version of the analysis set out earlier with respect to the HAT supports the conclusion that the CAT has jurisdiction to determine interlocutory and procedural matters. Once a Report and Decision of the Discipline Committee is rendered in a matter, Convocation takes jurisdiction over the imposition of penalty in the case pursuant to section 34 of the *Law Society Act*. As the decision of Convocation on penalty is clearly a statutory power of decision, Convocation becomes the "tribunal" at that point for the purposes of the *SPPA*. Thus, Convocation may delegate the determination of procedural matters to one of its members, sitting as the CAT, under s. 4.2 of the *SPPA*. This is effected by the Treasurer assigning this authority to one bencher.¹²

As with the HAT, it would be appropriate for the Treasurer in assigning authority in procedural and interlocutory matters to limit the scope of the assignment to specific matters. It should be noted that currently the CAT is only authorized by Convocation's motion to determine adjournment requests. We submit that the following matters also be assigned to the CAT:

- motions with respect to the content of material to be placed before Convocation,
- motions to strike out a Notice of Disagreement for failure to comply with the rules, and
- motions for the abridgement or extension of time under the rules.

VI. Review of Assignment Tribunal Decisions

Issue of Concern

The significant implications of some decisions in interlocutory matters require a mechanism for the review by more than one bencher of some or all of the decisions of the HAT and the CAT if either party disputes the result.

Proposed Action

- The Working Group considered implementing a broad mechanism for the review of the decisions of, not only the HAT and CAT but, a Discipline Committee and Convocation. Such a review could be supported by section 21.2 of the *SPPA* which enables a tribunal to review all or part of a decision which it has made, *in accordance with the tribunal's rules*.
- Since the Assignment Tribunals are delegates exercising the jurisdiction of their respective tribunals, it follows that the decisions of the Assignment Tribunals could either be reviewed by the Assignment Tribunal itself or the larger tribunal. That is, the Discipline Committee could review decisions of the HAT and Convocation could review decisions of the CAT.

¹² In a motion passed on March 24, 1995, Convocation authorized the Treasurer to assign the "Discipline Committee Hearing Assignment Bencher" to hear application adjournments with respect to matters pending Convocation, pursuant to s. 4.2 of the *SPPA*. This motion suggests that the HAT and CAT are the same individual; in practice, they are not. Accordingly, Convocation would need to pass a similar motion conferring jurisdiction on a separate bencher as CAT.

- However, after much consideration, the Working Group concluded that a general review mechanism was not advisable and could undermine the validity of decisions by the HAT and CAT if all decisions could be reviewed. In reaching this conclusion, the Working Group also considered the fact that the Committee conducting a hearing into a Complaint had a residual jurisdiction to review an interlocutory decision, if necessary to ensure a just result. Convocation has a similar discretion with respect to decisions by the CAT.
- Notwithstanding the rejection of a general review mechanism, the Working Group identified a concern relating to adjournment requests in which conditions on a lawyer's right to practise, such as an undertaking not to practise, were sought. Adjournment requests are considered to be procedural and are, therefore, handled by the Assignment Tribunals; however, these situations require the adjudication of what are actually substantive issues. Accordingly, it is proposed that these situations, if contested, should be transferred to a three-member Committee or Convocation.

VII. Deference Policy
Limitations of Current Rule

The Current Rule provides for a policy of deference by Convocation to both findings of misconduct or conduct unbecoming and recommendations of Committees. The policy also sets out standards of review for both findings and recommendations as to penalty. This policy does not reflect the statutory role of Convocation as defined in such cases as *Emerson and The Law Society*¹³ and *Law Society v. French*¹⁴ which limit Convocation's review to issues of penalty. The Court in *Emerson* provided the following analysis:

... first, the proceedings before the discipline committee are the first stage of a single disciplinary proceedings culminating with final decision by convocation as to penalty without a hearing *de novo* on the findings and decision of the discipline committee. Secondly, the discipline committee, in addition to finding the facts on the evidence, makes a decision that the solicitor is guilty of professional misconduct or otherwise which, as I interpret s. 34 of the *Law Society Act*, is not a matter that convocation is *by the Act*, empowered to determine; indeed the report and recommendation is provided for only by the Law Society's own regulations (s. 9) made under s. 63 of the Act which cannot enlarge the jurisdiction of convocation conferred by the Act or convert the decision to be made by the discipline committee into a report giving it a different character...

¹³ *Re Emerson and The Law Society of Upper Canada* (1983) 44 O.R. (2d) 729 (H.C.) at 478-479.

¹⁴ *Law Society of Upper Canada v. French* (1974) 29 D.L.R. (3d) 1 (S.C.C.) at 16-17.

... the decision [of the discipline committee] is "legally binding" on convocation in the sense that it is the basis of its decision as to penalty. The Act does not provide for a rehearing by convocation on facts and culpability (although it is a fair and proper practice that before deciding to act on the committee's decision and recommendation, convocation should give the solicitor an opportunity of making objections and submissions both as to the facts and recommendations for penalty as is done). Moreover, any decision of non-culpability by the discipline committee would be binding on convocation which would then be precluded by s. 33 from taking disciplinary action.¹⁵

While the proposed amendments to the Act, if passed, would eliminate the role of Convocation in discipline matters, in the interim, the Current Rules should be amended so that they do not conflict with the judicial interpretation of the statutory framework.

Proposed Action

- Convocation's review of findings of fact or misconduct/conduct unbecoming should be exercised only in extremely limited cases on the basis of the decision in *Emerson*. These circumstances should be more limited than suggested by the Current Rules, and, presumably, only arise where the Committee exceeded its jurisdiction, and the condition precedent to the exercise of Convocation's jurisdiction does not exist.
- Ultimately, a majority of the Working Group concluded that the scope of review needed to be somewhat broader than this very limited review in order for Convocation to give effect to its mandate to protect the public interest.

Other Existing Procedural Guidelines

In Camera Proceedings

A practice direction exists that reiterates the statutory presumption that hearings occur in public and details the circumstances in which hearings may be held *in camera*. In our view, this direction needs to be re-drafted to more accurately and simply describe the procedure employed in these matters. The redrafted guideline should be incorporated into the larger body of procedural rules.

Interim Suspensions

Interim suspensions are now provided for in the first rule adopted by Convocation under section 25 of the *SPPA*. The existing rule, with certain adjustments to reflect the issues which arose in the first use of this authority in February 1997, should be incorporated into the larger body of rules proposed.

¹⁵ *Emerson, supra*, at p.748-749.

Other Practice Directions

A number of other practice directions exist on a variety of issues from the Society's policy on prosecuting a complaint in the face of parallel criminal proceedings to the importance of attempting to resolve Agreed Statements of Fact. It is our view that statements of policy, such as with regard to parallel criminal proceedings, should be removed from the procedural rules. Other specific directions should, where appropriate, be incorporated into a complete procedural code.

Pre-hearing Conferences

One example of a miscellaneous practice direction that should be retained in an expanded procedural code is the direction in relation to pre-hearing conferences. This provision is now supplemented by section 5.3 of the *SPPA* which enables tribunals to direct parties to engage in a pre-hearing and empowers the pre-hearing officer (bencher) to make orders regarding the conduct of the hearing. The amended procedural rules should include the following matters relating to pre-hearing conferences.

- As is the current practice, pre-hearings should be available in any proceeding where one of the parties requests one; on the other hand, there should only be one pre-hearing in a matter, unless there is an order, either by the pre-hearing bencher or the HAT for a further pre-hearing.
- If one of the parties refuses to attend, an order that a pre-hearing be held can be obtained on motion.
- A pre-hearing conference should be held either in person or electronically.
- Other procedures identified in the draft rules prepared by the Society of Ontario Adjudicators and Regulators ("SOAR") relating to notice, the materials to be provided at a pre-hearing conference, the confidentiality of the discussions at the pre-hearing, and the confirmation of any agreements or orders at the pre-hearing should also be adopted.

Furthermore, with the amendment of Regulation 708 pursuant to the *Law Society Act*, a single bencher can hear any Complaint on the consent of the party. In practice, a single bencher hearing often follows from a pre-hearing, in that the parties simply consent to the pre-hearing bencher determining the matter. The procedures, including the necessary consents, to apply in this situation should also be detailed in the procedural rules.

New Provisions Arising from SPPA

Background

A number of the provisions in the new *SPPA* establish, or clarify, new powers for administrative tribunals. Some of these require the adoption of rules by the tribunal to give them effect. In our view, although it is unnecessary to adopt rules which merely repeat the statutory provisions, rules should be adopted which both enable the Discipline Committee and Convocation to avail themselves of the new statutory powers and bridge any

lacunae in the statutory scheme. The Society of Ontario Adjudicators and Regulators ("SOAR") has already distributed draft rules, prepared with reference to the provisions of the *SPPA*, for administrative tribunals to consider and adopt, as desired, to the particular circumstances and needs of the tribunal. In this section of our report, we review the various subject areas addressed by the SOAR Rules with regard to the desirability of including those rules, or at least the substance of those rules, in new procedural rules for the Law Society's discipline proceedings. Subject areas which have been addressed previously are not repeated here.

I. General Rules

It is apparent that certain general rules need to be included in any procedural rules which are, or aspire to be, comprehensive. These rules would include

- definitions,
- a provision that substantial compliance with the rules is adequate and that defects in form do not invalidate a proceeding,
- a provision allowing the HAT or CAT to adjust any of the time periods described in the rules,
- rules for the calculation of time (which provision would apply both to the rules and to clarify the ambiguities in this regard in the *Act*),
- a provision directing that all materials provided to, and communications with, a Discipline Committee will be directed through the Hearings Coordinator, and all similar communications to Convocation will be made through the Clerk to Convocation, and
- a provision that the procedure in any situation not expressly addressed by the procedural rules shall be determined by analogy to the balances of the procedural rules.

II. Motions

In order to ensure that preliminary matters are adequately defined for, and notice given to, both the tribunal and the other parties, it is necessary to implement a procedure regarding motions. Although our rules do not need to be as rigorous as the *Rules of Civil Procedure*, there does need to be a requirement of some form of written notice, as well as an established procedure for means of giving that notice, the evidence to be adduced on a motion, and the tribunal to which the motion is brought (be it HAT or Discipline Committee, CAT or Convocation). It would be advisable if more liberal service guidelines were in effect for interlocutory matters, than for the substantive matters mandated by the *Law Society Act*, so that materials in this regard could be delivered to counsel, faxed, or couriered. The assignment of different motions to the different tribunals has been discussed previously.

The adoption of a rule similar to SOAR draft rules 10.21 to 10.24 relating to the factors to be considered in granting an adjournment and the granting of adjournments on conditions is also recommended.

III. Disclosure

Section 5.4 of the *SPPA* now expressly empowers tribunals to make orders relating to the disclosure of material between parties. It is our view that our procedural rules should address the issue of disclosure, including establishing a procedure for bringing disclosure issues before the tribunal (namely, by motion). However, the broader issue of the Law Society's disclosure policies is currently under review by another working group. Consequently, we refrain at this time from setting out a position on the substance of any rules relating to disclosure, pending further guidance from the other working group.

IV. Notice of Hearing

The minimum requirements for the notice which must be given of a hearing are quite exhaustively defined in the *Law Society Act* and *SPPA*. Accordingly, any rules adopted in this regard may appear to be unnecessarily redundant. However, given that some of the notice provisions which have developed over time extend these requirements, some provisions relating to the notices are necessary.

V. Written Hearings

The *SPPA* permits tribunals to which that Act applies to hold hearings in writing, in accordance with the rules of the tribunal. In light of the nature of discipline proceedings and the significance of those proceedings on the disciplined lawyer, it is our view that it is inappropriate for hearings to be held wholly in written form. Obviously, there is a well-established practice in discipline proceedings for evidence to be adduced either by (written) agreed statement of facts or by (written) affidavit; however, in these instances, the Law Society, or the Law Society and the Solicitor, still attend before the Discipline Committee to present evidence, answer questions, and make submissions, and, in the case of the solicitor, stand before his or her governing body to answer for his or her misconduct. Those are all important aspects of our process which are lost in a wholly written hearing, and which distinguish these situations from a true written hearing.

In order to discourage, if not preclude, written hearings, we recommend that amended procedural rules omit any reference to hearings of this nature. The rules should, however, as discussed below, expressly identify the practice of using affidavit evidence or agreed statements of fact.

VI. Electronic Hearings

Section 5.2 of the *SPPA* now expressly empowers tribunals to conduct hearings through electronic media (such as conference telephone). It is our view that electronic hearings may be necessary and appropriate in *limited* circumstances, and that the procedural rules must set out the process by which such a hearing may be requested, the criteria to be applied in determining if an electronic hearing should be held, and the rules governing the conduct of such a hearing. However, as in the case of written hearings, it is our view that given the nature of discipline proceedings, it is generally inappropriate that they be held in electronic form. The specific issue of the conduct of electronic hearings is currently under review by another working group of the Professional Regulation Committee. Consequently, we refrain at this time from setting out a position on the substance of any rules relating to electronic hearings, pending further guidance from that working group.

VII. Conduct of Hearings

Recording and language of hearings

For similar clarity, it should be stated that the proceedings are recorded by a court reporter, and that independent audio or visual recording of the proceedings is prohibited, except where authorized by the tribunal. An exception should also be made for the current practice of video-taping the proceedings before Convocation.

The current policy on discipline hearings in French should be included in the rules of procedure, as well as a notice requirement for requesting such a hearing. However, it is not clear that such a policy exists at this time. Accordingly, no policy in this regard is reflected in the proposed procedural rules. It should be stipulated that a party calling a witness who requires an interpreter, or a party requiring an interpreter, should be responsible for arranging and paying for the interpreter. A similar provision should apply where a witness has special needs.

Exclusion of witnesses

The option of an order excluding witnesses should be identified in the rules.

Documentary Evidence

- With respect to Agreed Statements, it would be advisable if the rules expressly acknowledged the common practice of attempting to resolve as many factual issues in a hearing by way of agreed statement of facts and encouraged the parties to make efforts in that regard. It should then be specified that this statement can be accepted into evidence.
- With respect to documentary evidence, for the convenience the panels of the Discipline Committee, and their clerks, it needs to be stated in the rules that any party tendering documentary evidence must provide the Clerk with four or two copies of each document, depending on the quorum of the Committee.

VIII. Decisions and Orders

The circumstances where a written decision is required are enumerated in the *Law Society Act* and the *SPPA*. In our view, those provisions do not need to be repeated or extended. However, it would serve to inform the profession of the jurisprudence which has been developed by Convocation if it was expressly stated that a Discipline Committee or Convocation may order costs (including the factors to be considered in that decision) and may impose any terms or conditions on a decision as is deemed appropriate.

Furthermore, it would be advisable if a single benchler, either sitting as the HAT or as a single benchler Discipline Committee under s. 9 of Regulation 708 could refer a matter to a three benchler panel of the Discipline Committee where the benchler concluded that the matter would benefit from a consideration by the larger panel. This provision could be applied, for example, in cases where the subject matter of the Complaint, such as a fail to reply, ordinarily fell within the jurisdiction of a single benchler, but the circumstances of the case aggravated the seriousness of the case, so that the Society could be asking for termination of the member's rights and privileges on the basis of ungovernability.

IX. Review of Orders

The review of decisions of the HAT and CAT has been addressed previously. It should also be clarified that a panel of the Discipline Committee may vary its decision at any time until its Report is issued. This process could also accommodate motions for additional evidence to be adduced or the decision to be reviewed on the basis of a change of circumstances, prior to the matter being placed before Convocation.

Consideration was given to permitting the Discipline Committee to avail itself of the authority under the *SPPA* to review its own decisions where a Complaint has been dismissed or dealt with by way of reprimand in Committee. However, due to the potential for abuse of a review power and the appearance that such a power would be an indirect amendment of the process established by the *Law Society Act*, the Working Group does not propose the implementation of such a process.

Similarly, the Working Group considered whether to give effect to the authority granted to Convocation by s. 21.2 of the *SPPA* to review its decisions in certain cases. In a 1991 case¹⁶, Convocation was asked to reconsider a decision which had been made in the absence of the Solicitor (although he had been properly served in the opinion of Convocation). Convocation concluded that it had no jurisdiction to review its earlier decision. The decision was affirmed by the Divisional Court, but the matter is now pending before the Court of Appeal, leave having been granted. The Working Group concluded that other mechanisms were available, such as consent orders by the Divisional Court, to correct problems of this nature in meritorious cases, so that a general review mechanism was not required.

There may be an open question as to whether section 21.2 of the *SPPA* creates a review jurisdiction in the absence of an enacting provision in the procedural rules of a tribunal.

Date: April 25, 1997

Working Group: Janet L. Brooks, Rhonda Cohen, Georgette Gagnon and Glenn M. Stuart (Discipline Counsel)

Gavin A. MacKenzie, Chair, and W. Niels Ortved (Benchers)

¹⁶ Robert Walter Dvorak, heard by Convocation on January 25, 1991, reasons delivered on April 5, 1991

APPENDIX "A"

THE LAW SOCIETY OF UPPER CANADA

DISCIPLINE PROCESS
RULES OF PROCEDURE

PROCEDURAL MANAGEMENT BENCHER

1. Convocation shall appoint a bencher or benchers, other than the Chair and Vice Chairs of Discipline, to be known as the Procedural Management Bencher(s) to hear all motions relating to procedure. These appointments contemplate that procedure questions will arise in the course of the discipline process which should be dealt with promptly. These appointments will lead to the development of a body of authority. In due course practice directions will be given by Convocation. Any decision of the Procedural Management Bencher may be appealed to a discipline committee constituted to hear such appeals.

THE NEED FOR TRACKING

2. According to present practice, all disciplinary matters, irrespective of their relative seriousness, are processed and deliberated upon in essentially the same fashion. The result is that discipline committees and Convocation ultimately devote as much time and energy on what might be called "routine" matters of discipline as they do to more serious or complicated cases. The committees' time and resources could be and should be more effectively managed by the adoption of a system designed to eliminate the practice of treating all complaints in like fashion.

THE TRACKS

3. Discipline complaints will be allocated to one of three tracks, either:
- a) Fast Track;
 - b) Standard Track;
 - c) Complex Track.

THE FAST TRACK

4. The Fast Track will include complaints such as:

- a) failing to respond to inquiries from the Society;
- b) failing to co-operate with Audit department;
- c) practising law while under suspension;
- d) failing to file Form 2/3 report;
- e) breaching an Undertaking;
- f) failing to honour financial obligations;
- g) failing to reply to a fellow solicitor;
- h) failing to pay costs assessed by Society.

5. Counsel for the Society will designate the Track when the complaint is issued.

6. Complaints listed on the Fast Track shall be heard by a discipline committee within 90 days of service of the complaint.

7. Complaints listed on the Fast Track will be batched in groups (say, 20 or more) to be heard on a specified day each month.

25th April, 1997

8. Solicitors and their counsel appearing in response to complaints listed on the Fast Track are obliged to appear on the date and at the time fixed for hearing and wait their turns.

THE ROLE OF CLERKS

9. Litigation Clerks will be trained by the Society to prosecute complaints listed on the Fast Track.

10. Litigation Clerks may appear before discipline committees on behalf of the Society on complaints listed on the Fast Track.

THE STANDARD TRACK

11. The Standard Track will include all those complaints deemed in the first instance by counsel for the Society to be beyond the horizon of the Fast Track.

12. Only members of the Society may appear as counsel before Convocation and before a discipline committee hearing a complaint listed on the Standard Track and on the Complex Track.

13. Complaints listed on the Standard Track shall be heard by a discipline committee within four months of service of the complaint.

THE COMPLEX TRACK

14. A complaint may only be placed on the Complex Track by means of an order obtained from a Procedural Management Bencher.

15. The following provisions apply to a complaint on the Complex Track:

- a) a bencher shall be assigned by the Treasurer to monitor its progress, function as the Procedural Management Bencher, make any orders and to give any directions;
- b) the hearing of the complaint shall be within six months of its issue.

THE NOTICE

16. The Society will deliver a Notice with each complaint. The Notice will state that:

- a) the Society's representative is prepared to make disclosure;
- b) if this matter is not disposed of by the Discipline Committee, Convocation reserves the right to impose all penalties including disbarment in every case;
- c) the parties are required to lead all evidence they intend to rely upon before the Discipline Committee;
- d) Convocation generally will not permit the introduction of evidence before it that was not previously led before the Discipline Committee unless it can be established that the evidence to be introduced was not available at the time of the Committee hearing; and

- e) Convocation will no longer follow the practice of invariably offering the solicitor the opportunity for an adjournment if, during Convocation's deliberations on penalty, a motion for a higher penalty is made.

THE ROLE OF THE LAY BENCHER

17. If possible, a lay bencher will sit on every discipline committee hearing complaints listed on the Standard Track and Complex Track.

THE RELATIONSHIP BETWEEN CONVOCATION AND DISCIPLINE COMMITTEES

18. Convocation should adopt a policy of deference to the findings of fact and recommendations as to penalty made by discipline committees. A discipline committee's findings of fact and recommendations as to penalty should be accepted by Convocation unless:

- a) the discipline committee made an error in principle; or
- b) the discipline committee's finding or recommendation as to penalty is manifestly wrong; or
- c) the discipline committee lacked jurisdiction.

THE RULES OF PROCEDURE APPLICABLE FOLLOWING DELIVERY OF A DISCIPLINE COMMITTEE REPORT

19. Within 30 days of issuance of a discipline committee's report, each of the parties shall deliver a Notice of Acceptance of the decision or a Notice of Disagreement with the decision. If a Notice of Disagreement is delivered, it shall set out the grounds of the disagreement and the disposition sought before Convocation.

20. If a party does not deliver a Notice of Acceptance or a Notice of Disagreement within 30 days of issuance of the discipline committee's report, the party is presumed to have accepted the discipline committee's report and is deemed to have delivered a Notice of Acceptance.

21. The discipline committee's report will be transmitted to Convocation if only Notices of Acceptance are delivered or are deemed to have been delivered by the parties.

22. When Convocation receives a discipline committee's report and all parties have delivered Notices of Acceptance or are deemed to have delivered Notices of Acceptance, Convocation shall deliberate in camera and decide either to accept the discipline committee's report and recommendations as to penalty without a hearing or to require a hearing.

23. If Convocation accepts the discipline committee's decision and recommendations as to penalty without the necessity of a hearing, Convocation will announce this decision in public as well as its reasons for accepting the discipline committee's decision and recommendations as to penalty.

24. Convocation will then impose the recommended penalty or set a date for the imposition of the recommended penalty.

25. If Convocation decides to require a hearing, without giving reasons, Convocation will direct that a hearing take place and give any other necessary directions.

26. A party delivering a Notice of Disagreement shall contemporaneously deliver a Certificate of the Content of the Record Book listing the contents of the Record Book necessary for her, his or its purposes.

27. If Convocation directs a hearing, within 7 days of Convocation's direction, counsel for the Society shall deliver a Certificate of the Content of the Record Book.

28. Within 5 days of delivery of a Certificate of the Content of the Record Book, the other party or parties may also deliver a Certificate of the Contents of the Record Book.

29. The contents of the Record Book shall be as certified in the Certificate of the Contents of the Record Book or the Certificates of the Contents of the Record Book, as the case may be, unless an order to the contrary is made by the Procedural Management Bencher.

30. Counsel for the Society shall prepare and deliver the Record Book within 10 days of delivery of the first Certificate of the Contents of the Record Book.

31. The Record Book shall contain, in consecutively numbered pages, the following:

- a) a table of contents describing each document by its nature and date and, in the case of an exhibit, by exhibit number or letter;
- b) a copy of each Notice of Acceptance, and/or each Notice of Disagreement, as the case may be;
- c) a copy of each Certificate of the Contents of the Record Book;
- d) a copy of the discipline committee's decision;
- e) a list of all relevant transcripts, but not necessarily the transcripts themselves; and
- f) a copy of any other material necessary for Convocation's purposes.

32. If only one party delivers a Notice of Disagreement, that party shall serve a factum on all other parties within 15 days of the delivery of the Record Book.

33. If more than one party delivers a Notice of Disagreement, the Society's counsel shall serve a factum upon every other party within 15 days of the delivery of the Record Book.

34. Within 15 days of receipt of a factum, a party shall deliver a factum.

35. Each factum shall contain a concise statement, without argument, of the facts, a list of the points of argument and the law relied on.

36. Each party shall deliver with her, his or its factum a book of authorities, preferably containing only necessary extracts from the authorities cited in the factum.

37. Each party shall file 15 copies of the factum and book of authorities with the Office of the Secretary of the Law Society.

38. If a party intends to tender evidence to Convocation which was not before the discipline committee, the evidence shall be given by affidavit unless the parties agree otherwise or the Procedural Management Bencher or Convocation orders otherwise.

39. The affidavit or affidavits shall be served with a Notice of Intention to Tender Further Evidence upon every other party within the time limited for delivery of the tendering party's Certificate of the Content of the Record Book.

40. An affidavit for use before Convocation may contain statements of the deponent's information and belief only with respect to facts that are not contentious and only if the source of the information and the fact of the belief are specified in the affidavit.

41. The party or parties adverse to the party delivering the affidavit for use before Convocation after delivery of reply material, if any, may cross-examine the deponent in accordance with the procedure in the rules of civil procedure within 30 days of receipt of the Notice of Intention to Tender Further Evidence or thereafter with leave of the Procedural Management Benchler.

42. The costs of transcripts and appointments before the special examiner shall be borne by the party tendering the further evidence unless Convocation orders otherwise.

43. The party tendering the affidavits to Convocation shall deliver a Record Book of Further Evidence containing, in consecutively numbered pages, the following:

- a) a table of contents describing each document by its nature and date;
- b) a copy of each affidavit with exhibits described and listed separately;
- c) a copy of each transcript; and
- d) a copy of each exhibit marked during a cross-examination.

44. Any dispute about the contents of the affidavit or the Record Book of Further Evidence or the scope or conduct of a cross-examination shall be determined by the Procedural Management Benchler.

45. The Procedural Management Benchler may by order extend or abridge any time prescribed by these rules on such terms as are just.

46. Viva voce evidence shall not be permitted before Convocation without leave of Convocation or the Procedural Management Benchler.

47. Oral argument before Convocation is not mandatory. If all parties agree, submission to Convocation may be made in writing by use of facta without the necessity or oral argument.

48. If there is oral argument before Convocation, and only one Notice of Disagreement is delivered, in the absence of an agreement to the contrary between or among counsel the party filing the Notice of Disagreement shall be the first to make submissions to Convocation.

49. If Convocation requires a hearing, in the absence of an agreement to the contrary between or among counsel, the Society's counsel shall be the first to make submissions to Convocation.

50. Convocation shall give written reasons in every case in which a factum is delivered.

51. The written reasons of Convocation and of the discipline committees will be published each year.

Approved by Convocation on October 23, 1992;
Rule 16 amended by Convocation on February 23, 1996.

APPENDIX 5

SUMMARY OF THE REVISED RULES OF THE DISCIPLINE HEARING PROCESS

OVERVIEW

1. INTRODUCTION

The Working Group on Discipline Hearing Process Rules has prepared draft rules that are designed to update the current rules, largely by codifying informal procedures that have been developed to streamline the process but which are not explicitly referred to in the current rules. A main reason for updating the rules is that the current rules do not give to members adequate notice of the procedures that have been developed over time to govern the process.

For example, the current rules provide for the appointment of a "Procedural Management Benchler". In practice, many of the tasks that would otherwise be undertaken by the Procedural Management Benchler are performed by a single benchler sitting as either a "Hearing Assignment Tribunal" or "Convocation Assignment Tribunal". The creating of the Hearing and Assignment Tribunal and the Convocation Assignment Tribunal has generally had the salutary effect of reducing the amount of time devoted by three benchler panels to scheduling and preliminary procedural matters. The new draft rules formalize the creation of the Hearing Assignment Tribunal and the Convocation Assignment Tribunal (though the titles of the two bodies have been changed to "Hearing Management Tribunal" and "Convocation Management Tribunal" to reflect the fact that their responsibilities include the determination of procedural issues in addition to scheduling matters.)

A second reason for the creating of the draft rules is that since the current rules were approved by Convocation the *Statutory Powers Procedure Act* has been amended by the addition of section 25.1, which empowers tribunals to make rules governing the practice and procedure before them.

The working group had the benefit of similar rules recently approved under the *Statutory Powers Procedure Act* by such organizations as the College of Physicians and Surgeons of Ontario, the Health Services Appeal Board and the Society of Ontario Adjudicators and Regulators. The working group also had regard to certain provisions of the *Rules of Civil Procedure*.

The following is a brief summary of the matters covered by each of the draft rules.

RULE 1 - INTERPRETATION

Rule 1 includes definitions of terms adopted in the rules. It also includes provisions designed to promote the just and expeditious determination of allegations made against members, and to make it clear that no proceeding is invalid by reason only of defects or irregularities in form.

Rule 1 also contains provisions similar to those in the *Rules of Civil Procedure* governing the computation of time periods specified in the rules. The Hearing Management Tribunal (HMT) or a committee is empowered to abridge or extend time periods.

Finally, Rule 1 provides that provisions of the rules may be waived on consent or by order.

RULE 2 - PROCEDURES PRIOR TO HEARING

Rule 2 deals with such matters as service, the procedure for setting hearing dates before the HMT, adjournments and the location of hearings.

Subrules 2.05(4) and (5) provide that if the Law Society is seeking an undertaking not to practise or another limitation on the member's rights as a term of an adjournment, either party has the right to have the issue determined by a three-bencher committee or, if the matter is pending before Convocation, by Convocation.

Rule 2.06 provides that unless otherwise ordered hearings will take place at Osgoode Hall, but that a motion may be brought for an order that a hearing take place in another location having regard to the balance of convenience.

RULE 3 - PRE-HEARING CONFERENCE

Rule 3 codifies the existing practice with regards to pre-hearing conferences. Subrule 3.01(3) provides that a bencher who conducts a pre-hearing conference shall not sit as a member of the committee hearing the Complaint unless the parties consent.

Rule 3.06 provides that a pre-hearing conference may be held electronically by order of the pre-hearing conference bencher or the HMT, or on consent.

RULE 4 - SINGLE BENCHER COMMITTEE

Rule 4, again, formalizes the current procedure. Rule 4.02 provides that pre-hearing conference bencher may sit as a single bencher committee to hear the Complaint only with the written consent of the parties.

RULE 5 - MOTIONS

Rule 5 establishes which motions may be heard by the HMT, which motions must be heard by a three-bencher committee, and which motions must be heard by the committee that hears the case on its merits. For example, questions of whether all or part of a hearing should be held *in camera* and constitutional issues are reserved to the committee hearing the Complaint on its merits.

RULE 6 - INTERIM DECISIONS AND ORDERS

Rule 6 governs applications for interim suspensions, among other interim decisions and orders. It largely replicates the existing rule, which was approved by Convocation in 1996.

Rule 6 qualifies the current rule that evidence in support of an application for an interim suspension may be in the form of affidavits containing statements of the deponents' information and belief. Rule 6 provides that where, in the opinion of the committee, better evidence could be adduced through direct evidence of a witness, the committee may require the party to lead such direct evidence, and may strike out the evidence on information and belief.

RULE 7 - HEARING IN PUBLIC UNLESS ORDERED *IN CAMERA*

Rule 7 specifies the procedure to be followed where a party seeks an order that all or part of a hearing be held in the absence of the public. It contains no significant changes to the current procedure.

RULE 8 - CONDUCT OF HEARING

Rule 8 deals with such matters as the introduction of agreed statements of facts as evidence at the hearing, documentary evidence, expert reports, the exclusion of witnesses, visual or audio recording of proceedings, and interpreters. It contains no significant modifications to the procedures that are currently in place.

RULE 9 - CONVOCATION PROCEDURE

Rule 9 deals with the jurisdiction of the Convocation Management Tribunal ("CMT") to hear certain motions. It also requires the filing of notices of disagreement and factums in contested cases, in accordance with the current rules.

Rule 9.06 deals with the procedure to be followed by a party who brings a motion to tender fresh evidence.

Rule 9.08 addresses the policy of deference to findings to the committee, which is in accordance with the current rules.

RULE 10 - COSTS

Rule 10 specifies the procedure to be followed where either the Society or the member brings a motion for the payment of costs in accordance with sections 40 or 41 of the Law Society Act respectively.

RULE 11 - DECISIONS AND ORDERS

Rule 11 governs the final decisions and orders at both the committee level and at Convocation. Rule 11.03 requires Convocation to give reasons in every case in which it does not adopt the report of the committee, including the committee's recommendation as to penalty.

RULE 12 - REVIEW OF COMMITTEE DECISIONS

Subrule 12.01(1) empowers the committee or the HMT at any time to correct typographical errors, errors of calculation, misstatements, technical errors or other similar errors without prior notice to the parties.

Subrule 12.01(3) provides that where the committee has decided to refer a matter to Convocation, the committee retains its jurisdiction over the Complaint until its report is issued.

RULE 13 - REVIEW OF DECISIONS

Subrule 13.01(1), similarly, empowers the CMT to correct typographical errors , etc.

SUMMARY OF THE REVISED RULES OF THE DISCIPLINE HEARING PROCESS
APPENDIX 6

LAW SOCIETY OF UPPER CANADA
RULES OF THE DISCIPLINE HEARING PROCESS

Made under s. 25.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990 c. S.22,
as amended

THE LAW SOCIETY OF UPPER CANADA
RULES OF THE DISCIPLINE HEARING PROCESS

(MADE UNDER SECTION 25.1 OF
THE *STATUTORY POWERS PROCEDURE ACT*, R.S.O. 1990 c. S. 22)

INDEX

RULE 1	INTERPRETATION	1
	1.01 Application	1
	1.02 Definitions	1
	1.03 Interpretation of Rules	2
	1.04 Waiver of a Rule	2
	1.05 Substantial Compliance	2
	1.06 Computing Time	3
	1.07 Lengthening Or Shortening Time Periods	3
	1.08 Removal of Counsel	3
	1.09 Communication With Tribunal	3
RULE 2	PROCEDURES PRIOR TO HEARING	4
	2.01 Materials Served With Complaint	4
	2.02 Service of Documents	4
	2.03 Hearings Management Tribunal (HMT)	5
	2.04 Setting Hearing Dates	6
	2.05 Adjournments	6
	2.06 Location of Hearing	8
RULE 3	PRE-HEARING CONFERENCE	8
	3.01 Party to Request	8
	3.02 Direction to Attend	8
	3.03 Notice of Pre-hearing Conference	8
	3.04 Preparation for Pre-Hearing Conference	9
	3.05 Procedure at Pre-hearing Conference	9
	3.06 Electronic Pre-hearing Conference	9
	3.07 Without Prejudice	9
	3.08 Documents	9
	3.09 Agreements And Undertakings	10
RULE 4	SINGLE BENCHER COMMITTEE	10
	4.01 General	10
	4.02 Consent to Single Bencher Committee	10
	4.03 Pre-hearing Bencher Sitting as Single Bencher Committee	10

RULE 5	MOTIONS	11
	5.01 General	11
	5.02 Motions before Hearing Management Tribunal (HMT)	11
	5.03 Motions before Committee	12
	5.04 Evidence on Motions	13
	5.05 Notice of Constitutional Question	13
RULE 6	INTERIM DECISIONS AND ORDERS	14
	6.01 Motion	14
	6.02 Minimum Notice Period	14
	6.03 Evidence on Motion	14
	6.04 Service of Affidavits	14
	6.05 Submissions	15
	6.06 Committee Report	15
	6.07 Hearing Before Convocation	15
	6.08 Motions Directly to Convocation	15
	6.09 Expeditious Prosecution of Complaint	16
	6.10 Further Motions on New Evidence	16
	6.11 Effect of Refusal of Undertaking	16
	6.12 Order to Specify Duration	16
RULE 7	HEARING IN PUBLIC UNLESS ORDERED <i>IN CAMERA</i>	16
	7.01 General	16
	7.02 Procedure Where Party Seeks <i>In Camera</i> Order	17
	7.03 Non-disclosure by Non-party	17
	7.04 Consequences of Dismissal of Motion	17
RULE 8	CONDUCT OF HEARING	18
	8.01 Agreed Statements of Facts	18
	8.02 Documentary Evidence	18
	8.03 Evidence	18
	8.04 Expert Reports	18
	8.05 Exclusion of Witnesses	19
	8.06 Visual or Audio Recording	19
	8.07 Court Reporters	19
	8.08 Interpreters	20
	8.09 Special Needs	20
RULE 9	CONDUCT OF PROCEEDINGS AT CONVOCATION MANAGEMENT TRIBUNAL AND AT CONVOCATION	20
	9.01 Service of the Report	20
	9.02 Convocation Management Tribunal (CMT)	20
	9.03 Notice of Disagreement	21
	9.04 Uncontested Matters	21
	9.05 Contested Matters	21
	9.06 Motion to Tender Fresh Evidence	23
	9.07 Procedure Before Convocation	24
	9.08 Policy of Deference	25
RULE 10	COSTS	25
	10.01 Motion for Costs by Society	25
	10.02 Motion for Costs by Member	26
	10.03 Quantum of Costs	26
RULE 11	DECISIONS AND ORDERS	26
	11.01 At Committee	26
	11.02 At Convocation	26
	11.03 Reasons of Convocation	26

RULE 12 REVIEW OF COMMITTEE DECISIONS 27

RULE 13 REVIEW OF CONVOCATION DECISIONS 27

FORMS

Form #4A: Consent to Hearing by Single Bencher Committee . . . 28

Form #4B: Consent to Hearing by Pre-hearing Conference Bencher 29

THE LAW SOCIETY OF UPPER CANADA

DRAFT RULES OF THE DISCIPLINE HEARING PROCESS
(MADE UNDER SECTION 25.1 OF
THE STATUTORY POWERS PROCEDURE ACT, R.S.O. 1990 c. S. 22)

RULE 1 INTERPRETATION

Application

1.01 These Rules apply to all discipline proceedings under the *Law Society Act*, R.S.O. 1990, c. L-8.

Definitions

1.02 (1) In these Rules, unless the context requires otherwise, words that are not defined in subrule (2) have the meanings defined in the *Law Society Act* or the *Statutory Powers Procedure Act*.

(2) In these Rules,

"Committee" means a panel of the Discipline Committee convened to conduct a hearing into one or more Complaints and includes both a committee requiring a quorum of three Benchers ("three Bencher Committee") and a committee requiring a quorum of one Bencher ("single Bencher Committee") pursuant to section 9 of Regulation 708 under the *Law Society Act*;

"Complaint" means a written complaint under oath alleging that a member has been guilty of professional misconduct or conduct unbecoming a barrister and solicitor, or conduct unbecoming a student member, which has been filed in the office of the Secretary of the Society;

"CMT" means the Convocation Management Tribunal, being the single Bencher to whom Convocation assigns its jurisdiction over procedural and interlocutory matters from time to time under s. 4.2 of the *Statutory Powers Procedure Act*;

"HMT" means the Hearings Management Tribunal, being the single Bencher to whom the Discipline Committee assigns its jurisdiction over procedural and interlocutory matters from time to time under s. 4.2 of the *Statutory Powers Procedure Act*;

"Holiday" means Saturday, Sunday and any statutory holiday;

"member" includes a student member;

"person" includes a party to a proceeding;

"proceeding" means a discipline proceeding that commences with the filing of a Complaint with the office of the Secretary of the Society and concludes with the final order of a Committee or Convocation as the case may be;

"Report" means the final written Report and Decision of a Committee to Convocation, including the Committee's recommendation as to penalty;

"Rule", "rule" and "subrule" have the same meaning as in the *Rules of Civil Procedure*; and,

"Tribunal" means whichever of the HMT, Committee, CMT, or Convocation is or will be hearing the applicable part of a proceeding.

Interpretation of Rules

- 1.03 (1) These Rules shall be liberally construed to secure the just, and where justice for the member would not be compromised, the most expeditious determination of the allegations against the member.
- (2) Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.
- (3) Where any of these Rules are in conflict with an statute or regulation the provisions of the statute or regulation prevail.

Waiver of A Rule

- 1.04 (1) Any provision of these Rules may be waived on the consent of the parties or upon order of the Tribunal.
- (2) A party requesting that a provision of these Rules be waived without the consent of the other party, shall bring a motion to the Tribunal.

Substantial Compliance

- 1.05 (1) Substantial compliance with a form or notice required by or under these Rules is sufficient.
- (2) No proceeding is invalid by reason only of a defect or other irregularity in form.

Computing Time

- 1.06 (1) Subject to rule 1.07, in computing time periods specified in these Rules or in an order of a Tribunal,
- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;

- (b) where a period of less than seven days is prescribed, holidays shall not be counted;
- (c) where the time for doing an act under these Rules expires on a holiday, the act may be done on the next day that is not a holiday; and
- (d) where, under these Rules, a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, it shall be deemed to be received or effective on the next day that is not a holiday.

Lengthening Or Shortening Time Periods

- 1.07 A Tribunal may, at any time and on such conditions as it considers appropriate, lengthen or shorten any time prescribed under these Rules.

Removal of Counsel

- 1.08 Where a person's counsel seeks to be removed from the record of a proceeding, the counsel shall bring a motion before the Tribunal.

Communication With Tribunal

- 1.09 Communication with a Tribunal by a person shall be in the presence of all parties or through the Clerk of the Discipline Committee (in the case of the HMT, a Committee, or the CMT) or through the Clerk to Convocation (in the case of Convocation) with a copy to all parties.

RULE 2 PROCEDURES PRIOR TO HEARING

Materials Served with Complaint

- 2.01 (1) A Complaint shall be served upon the member with the following:
- (a) a notice, in accordance with the requirements of section 6 of the *Statutory Powers Procedure Act*, of the time and place on which the Complaint is returnable before the HMT or a Committee;
 - (b) a notice in accordance with subrule (2);
 - (c) a copy of these Rules; and
 - (d) a summons to attend.
- (2) The member shall receive notice that
- (a) the Society's counsel is prepared to make disclosure;
 - (b) the parties must lead all evidence relevant to a Complaint before the Committee conducting the hearing into the Complaint;

- (c) Convocation has the right to impose all penalties, including disbarment, in every case; and
- (d) Convocation will not necessarily offer the member an opportunity for an adjournment where a motion for a higher penalty is made at Convocation.

Service of Documents

- 2.02 (1) Subject to subrule (2), a Complaint shall be served upon the member personally or by mailing a copy thereof in a registered letter addressed to the member at the member's last known residence or office address as shown by the records of the Society.
- (2) Where a member has retained counsel before the issuance of a Complaint, service of the Complaint may be effected upon counsel where counsel has been authorized in writing to accept service.
- (3) Service of any document which is not required by the *Law Society Act* to be served in accordance with the process described in subrule (1) may be effected by delivering the document:
- (a) by personal delivery to the person or the person's counsel;
 - (b) by regular or registered mail to the last known address of the person or the person's counsel;
 - (c) by facsimile transmission to the last known facsimile transmission number of the person or the person's counsel, but only if the document does not exceed 15 pages or, if the document is longer, the recipient consents;
 - (d) by courier, including Priority Post, to the last known address of the person or the person's counsel; or,
 - (e) by any other means authorized or permitted by the Tribunal.
- (4) Service is deemed to be effective when delivered
- (a) by personal delivery or facsimile transmission before 4 p.m., on the day of delivery or facsimile transmission, and after that time, on the next day,
 - (b) by regular or registered mail, on the fifth day after mailing,
 - (c) by courier, on the second day after the document was provided to the courier, and
 - (d) by any means authorized or permitted by the Tribunal, on the date ordered by the Tribunal.

Hearings Management Tribunal (HMT)

- 2.03 (1) Subject to subrule (3), a Complaint shall be first returnable before the HMT to set a date for a hearing into the Complaint.
- (2) When the Complaint is served, the member shall be given notice of the time and place at which the Complaint shall be returnable before the HMT.

- (3) A Complaint shall be first returnable before a Committee for the purpose of proceeding with the hearing into the Complaint where
 - (a) subject to rule 5.03(5)(b), a hearing of another Complaint against the member has already been scheduled for the same date, or
 - (b) the nature of the misconduct alleged in the Complaint requires that the hearing be expedited,

and, when the Complaint is served, the member shall be given notice of the time and place at which the hearing into the Complaint shall proceed.

Setting Hearing Dates

- 2.04 (1) Subject to subrule (2), a hearing into a Complaint shall be set only on regularly scheduled dates established by the Discipline Hearings Co-ordinator.
- (2) Where the parties estimate that the hearing into a Complaint will require more than one day, the parties shall arrange special dates for the hearing with the HMT, and the HMT may set hearing dates for hearings estimated to require more than one day only after consultation with the Discipline Hearings Co-ordinator.
- (3) Where, in the course of a hearing, further dates are required to complete the hearing, such further dates shall be set by the Committee seized of the matter after consultation with the Discipline Hearings Co-ordinator.

Adjournments

- 2.05 (1) A hearing of any proceeding under these Rules may be adjourned from time to time where the Tribunal is satisfied that an adjournment is appropriate.
- (2) A party requesting an adjournment of a scheduled hearing date shall give notice to the other party and the Discipline Hearings Co-ordinator, as soon as the grounds for the request become known.
- (3) Where the grounds for an adjournment request are known in advance of the scheduled date for the hearing, subject to subrule (4), the adjournment request shall be made
 - (a) to the HMT, where a hearing before a Committee into a Complaint is pending; or,
 - (b) to the CMT, where consideration of a Committee's Report by Convocation is pending,where a sitting of the HMT or CMT is scheduled, or can be scheduled, before the date scheduled for the hearing.
- (4) Where an adjournment request is brought before the HMT and a contested issue arises regarding the terms to be imposed on the member's rights and privileges as a condition of the adjournment, on the request of a party, the HMT shall adjourn the matter to the first available three Bencher Committee.

- (5) Where an adjournment request is brought before the CMT and a contested issue arises regarding the terms to be imposed on the member's rights and privileges as a condition of the adjournment, on the request of a party, the CMT shall adjourn the matter to the first available sitting of Convocation.
- (6) In circumstances to which subrule (3) does not apply, a request for adjournment shall be made to the Tribunal on the date scheduled for the hearing.
- (7) The Tribunal hearing an adjournment request shall consider the following factors:
 - (a) the reason for the request;
 - (b) any prejudice which will be suffered if the adjournment is refused;
 - (c) the extent to which any other party will be prejudiced if the adjournment is granted;
 - (d) the extent to which the requesting party gave advance notice of the request for an adjournment to other parties and to the Discipline Hearings Co-ordinator;
 - (e) whether the other party consents to the request;
 - (f) whether the requesting party previously consented to the hearing proceeding on the scheduled date;
 - (g) the length of adjournment requested;
 - (h) any previous delays including the number and length of previous adjournments granted at the request of or with the consent of the party currently requesting the adjournment; and,
 - (i) the public interest in the efficient and timely conduct of proceedings.
- (8) Except in extraordinary circumstances, the Tribunal shall refuse an adjournment where the hearing date was endorsed "peremptory" against the party requesting the adjournment.
- (9) Subject to subrules (4) and (5), the Tribunal may impose conditions that it considers appropriate in granting an adjournment.

Location of Hearings

- 2.06 (1) Subject to this rule, all hearings shall be held at the offices of the Society in Toronto.
- (2) Where the parties cannot agree on the location of a hearing, a motion may be brought before the HMT to determine the location of the hearing.
- (3) On a motion under this subrule, the HMT shall consider the balance of convenience.

- (4) The HMT may set the location of a hearing in a place other than the offices of the Society in Toronto only after consultation with the Discipline Hearings Co-ordinator and the Secretary of the Society.
- (5) The Discipline Hearings Coordinator shall be advised forthwith where there is a motion, opposed or on consent, for an adjournment of a hearing scheduled to be held in a location other than the offices of the Society in Toronto.

RULE 3 PRE-HEARING CONFERENCE

Party to Request

- 3.01 (1) The member or the Society may request that a pre-hearing conference take place before a Bencher.
- (2) There shall not be more than one pre-hearing conference in a matter except by order of the pre-hearing conference Bencher or the HMT or on the consent of the parties.
- (3) The pre-hearing conference Bencher shall not sit as a member of the Committee at the hearing into the Complaint unless the parties consent in accordance with Rule 4.

Direction to Attend

- 3.02 Where a party refuses to attend a pre-hearing conference on consent, an order that a pre-hearing conference be held may be obtained on motion to the HMT.

Notice of Pre-hearing Conference

- 3.03 (1) Unless otherwise ordered, written notice of the time and place of a pre-hearing conference shall be given by the Discipline Hearings Co-ordinator to the member, the Society, and the pre-hearing Bencher.
- (2) Unless otherwise ordered or the parties consent, the parties and their counsel are required to attend in person.

Preparation for Pre-hearing Conference

- 3.04 Unless otherwise ordered, the member and the Society shall exchange and file pre-hearing conference memoranda and any related documentation and provide copies to the pre-hearing conference Bencher, no less than two days prior to the pre-hearing conference.

Procedure at Pre-hearing Conference

- 3.05 At the pre-hearing conference, the presiding Bencher shall discuss the following with the parties:
 - (a) whether any of all of the issues can be settled;
 - (b) whether the issues can be simplified;
 - (c) whether there are any agreed facts; and

- (d) the advisability of attempting other forms of resolution of the matter.

Electronic Pre-hearing Conference

3.06 A pre-hearing conference may be held electronically by order of the pre-hearing conference Bencher or the HMT, or on consent.
Without Prejudice

3.07 A pre-hearing conference shall not be open to the public, and all discussions at the pre-hearing conference shall be without prejudice.

Documents

3.08 Documents filed at the pre-hearing

- (a) shall be returned to the party who filed the documents after the conference, and
(b) shall not be considered to be filed in the proceedings.

Agreements And Undertakings

- 3.09 (1) Agreements and undertakings made at a pre-hearing conference may be recorded in a memorandum prepared by or at the direction of the pre-hearing conference Bencher.
(2) Copies of the memorandum referred to in subrule (1) shall be provided to the parties.
(3) Agreements and undertakings in the memorandum referred to in subrule (1) are binding upon the parties to the proceeding unless otherwise ordered by the Committee.

RULE 4 SINGLE BENCHER COMMITTEE

General

4.01 A hearing into a Complaint may be heard by a single Bencher Committee pursuant to section 9 of Regulation 708 made under the *Law Society Act*.

Consent to Single Bencher Committee

4.02 Where the member and the Society consent to a Complaint being heard before a single Bencher Committee, a written consent, in Form #4A, must be filed with the Committee prior to the commencement of the hearing.

Pre-hearing Bencher Sitting as Single Bencher Committee

4.03 (1) Where a pre-hearing conference has been held in relation to a Complaint, and the member and Society consent to the Complaint being heard before the pre-hearing Bencher sitting as a single Bencher Committee,

- (a) the hearing shall not commence until after the conclusion of the pre-hearing conference;
- (b) the hearing shall be conducted in accordance with the same rules applicable to any other hearing into a Complaint by a Committee; and,
- (b) written consent, in Form #4B, must be executed after the pre-hearing conference by both the member and the Society and filed with the Committee prior to the commencement of the hearing.

RULE 5 MOTIONS

General

- 5.01 (1) "Motion" means a request for a ruling or decision by a Tribunal on a particular issue at any stage in the proceeding which is subject to these Rules, other than a request for an adjournment.
- (2) The moving party shall serve written notice of the motion on the other party and the Clerk of the Committee, no less than two days before the date specified for the hearing of the motion.
 - (3) Rule 2.04 applies, with necessary modifications, to the selection of dates for the hearing of a motion before the HMT or a Committee.
 - (4) A notice of motion shall set out the grounds for the motion and the relief requested and shall be accompanied by any evidence to be relied upon.
 - (5) A party responding to a motion may adduce additional evidence and shall serve and file such evidence no later than 2:00 p.m. on the day prior to the hearing of the motion.

Motions before Hearing Management Tribunal (HMT)

- 5.02 Where a Complaint has not been heard by a Committee, motions respecting the following matters shall be heard by the HMT:
- (a) the abridgement or extension of any time prescribed by these Rules or by a previous order of the HMT;
 - (b) the location of the hearing of a Complaint or a motion;
 - (c) the form of the hearing, including a request to hold a hearing electronically, or the form of some or all of the evidence to be tendered at the hearing;
 - (d) the holding of a pre-hearing conference, or the terms on which such a conference may be held; and,
 - (e) the consequences of non-compliance with a previous order of the HMT.

Motions before Committee

- 5.03 (1) Where a Complaint has not been heard by the Committee, subject to subrule (2), motions with respect to the following matters shall be heard by a three Bencher Committee, prior to the scheduled hearing of the Complaint on its merits:
- (a) jurisdiction of the Society to conduct a hearing into the Complaint;
 - (b) stay of proceedings based on an alleged abuse of process;
 - (c) disclosure of particulars, documents or things;
 - (d) standing of a third party;
 - (e) removal of counsel or agent for a party;
 - (f) any matter referred to a three Bencher Committee by the HMT or a single Bencher Committee; and,
 - (g) any matter not specifically assigned to the HMT by rule 5.02 or to the Committee hearing the Complaint on its merits by rule 5.03 (5).
- (2) Where a Complaint may be heard on its merits by a single Bencher Committee under section 9(3.1) of Regulation 708, motions under this Rule may be brought before a single Bencher Committee.
- (3) Where a Committee has heard a motion with respect to a Complaint, any further motion under this Rule shall be heard by the same Committee, if practicable;
- (4) Any motion to which this Rule applies shall be brought at least seven days prior to the scheduled hearing date of the hearing of the Complaint on its merits.
- (5) A motion with respect to the following matters shall be heard by the Committee at the hearing of the Complaint on its merits:
- (a) the exclusion of the public from all or part of a hearing;
 - (b) whether two or more Complaints shall be heard together;
 - (c) the exclusion of witnesses from the hearing;
 - (d) constitutional issues, subject to rule 5.05;
 - (e) any matter identified in rule 5.02 or subrule 5.03(1) which arises for the first time during the hearing into the Complaint on its merits; and,
 - (f) any matter adjourned to the Committee hearing the Complaint by either the HMT or another Committee.
- (6) In exceptional circumstances, a motion which has been heard and decided under rule 5.02 or subrule 5.03(1), or an adjournment request under rule 2.05, may be renewed before the Committee hearing the Complaint on its merits, with leave of that Committee.

Evidence on Motions

- 5.04 (1) Evidence on a motion shall be given by affidavit, unless otherwise ordered by the Committee or Convocation, or with the consent of the parties.
- (2) An affidavit for use on a motion may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit but where, in the opinion of the Committee, better evidence could be adduced through direct evidence of a witness, the Committee or Convocation may require the party to file or call such direct evidence and strike out the evidence filed.
- (3) Evidence by cross-examination of a deponent of an affidavit served by the other party is admissible in the hearing of a motion.

Notice of Constitutional Question

- 5.05 (1) Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law under legislation, or a rule of common law, or where a party claims a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be served on the other parties and the Clerk of the Committee as soon as practicable after the circumstances requiring notice become known and not less than 15 days before the question is to be argued.
- (2) Notice shall be substantially in the same form as Form 4F under the Rules of Civil Procedure.

RULE 6 INTERIM DECISIONS AND ORDERS

Motion

- 6.01 (1) Where a Complaint has been served on the member, a motion may be made to the Committee or, in cases of urgency, to Convocation, for an interim order suspending or imposing conditions upon the member's rights and privileges.
- (2) A motion for an interim suspension may be brought at any time before the Committee hearing a Complaint.

Minimum Notice Period

- 6.02 Notice of a motion under this Rule shall be served on the other party at least three days before the date on which the motion is to be heard.

Evidence on Motion

- 6.03 (1) Evidence on a motion for an interim order of suspension or conditions shall be given by affidavit, unless otherwise ordered by the Committee or Convocation.

- (2) An affidavit for use on a motion for an interim order of suspension or conditions may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit but where, in the opinion of the Committee, better evidence could be adduced through direct evidence of a witness, the Committee may require the party to file or call such direct evidence and strike out the evidence filed.
- (3) Evidence by cross-examination of a deponent of an affidavit served by the other party is admissible in the hearing of a motion for an interim order of suspension or conditions.
- (4) Where a motion for an interim suspension is brought during or after the conclusion of a hearing into a Complaint, the Committee may rely on evidence adduced during the course of the hearing, in addition to any evidence which may be adduced specifically in relation to the motion.

Service of Affidavits

- 6.04
- (1) All affidavits on which the motion is founded shall be served on the other party with the notice of motion.
 - (2) All affidavits to be used at the hearing in opposition to the motion shall be served on the other party not later than 2 p.m. on the day before the hearing.
 - (3) Where a party intends to rely on oral evidence, that party shall disclose to the other party not later than 2:00 p.m. on the day before the hearing, the name, address and a summary of the anticipated evidence of that witness, and should provide to the other party copies of any related documents.

Submissions

- 6.05 At the hearing of the motion, each party may make submissions.

Committee Report

- 6.06
- (1) Where, at the conclusion of the hearing of the motion, the Committee is satisfied that the protection of the public requires that an interim order of suspension or conditions be made, the Committee shall report in writing to Convocation, setting forth a summary of the evidence at the hearing and its recommendations as to the action to be taken by Convocation.
 - (2) The report of the Committee shall be signed by the member of the Committee who presided at the hearing or in his or her absence by another member of the Committee who was present at the hearing.
 - (3) The Report of the Committee shall be served upon the member no later than the day before Convocation considers the Report.

Hearing Before Convocation

- 6.07
- (1) Upon receipt of the Committee's Report, Convocation shall hold a hearing at which the parties shall be permitted to make submissions, including submissions as to the terms of any interim order that may be made.

- (2) At the conclusion of the hearing, Convocation shall decide whether or not to make an interim order suspending or imposing conditions upon the member's rights and privileges.

Motions Directly to Convocation

- 6.08 (1) In cases of urgency, a motion may be made directly to Convocation for an interim order suspending or imposing conditions upon the member's rights and privileges.
- (2) Rules 6.01 to 6.05 and rule 6.07 apply, with necessary modifications, to a motion made directly to Convocation under this Rule.

Expeditious Prosecution of Complaint

- 6.09 If an interim order of suspension or conditions is made by Convocation,
- (a) the Society shall prosecute the Complaint expeditiously; and,
- (b) the Committee and Convocation shall give precedence to hearing the Complaint and making a decision.

Further Motions on New Evidence

- 6.10 Where Convocation has disposed of a motion brought under this Rule, a further motion may be made on new evidence to the Committee or, in cases of urgency, to Convocation,
- (a) for an interim order of suspension or conditions; or
- (b) for an order varying Convocation's order.

Effect of Refusal of Undertaking

- 6.11 A motion for an interim suspension may be brought under this Rule notwithstanding that a Tribunal had previously denied a request by the Society to require an undertaking by the member not to practice law as a condition of an adjournment.

Order to Specify Duration

- 6.12 Every interim order of suspension or conditions continues in force until the final disposition of the proceedings by Convocation or the Committee, as the case may be.

RULE 7 HEARING IN PUBLIC UNLESS ORDERED *IN CAMERA*

General

- 7.01 Subject to section 9 of the *Statutory Powers Procedure Act*, proceedings shall be open to the public.

Procedure Where Party Seeks *in Camera* Order

- 7.02 (1) A party seeking an order that any part of the proceeding be held in the absence of the public shall bring a motion in public before the Tribunal.
- (2) Where the moving party is of the view that it will not be possible to argue the motion without disclosing specific matters which are the subject of the motion, that party may seek an order that the motion be heard in the absence of the public.
- (3) Where a party requests that the motion be held in the absence of the public, the party shall state in public the general grounds upon which the motion is brought as concretely as is reasonably possible without disclosing the specific matters which the party wishes to be received in the absence of the public.
- (4) Where a party requests that the motion be heard in the absence of the public, the Tribunal may grant leave to a non-party to participate in the motion.
- (5) In considering whether to permit a non-party to participate in the motion, the Tribunal should consider the nature of the non-party's interest, whether there is any reason for concern that the non-party may fail to maintain the confidentiality of matters which are disclosed in the absence of the public and whether the interests of the public will otherwise be adequately represented.

Non-disclosure by Non-party

- 7.03 (1) The Tribunal hearing that part of the proceeding shall advise a non-party who is permitted to participate in the absence of the public in the motion that, unless otherwise ordered, the non-party may not publish or otherwise communicate or disclose to anyone outside the hearing room anything that has been disclosed in the absence of the public.
- (2) The Tribunal hearing that part of the proceeding shall advise the non-party that if the confidentiality of the proceeding is breached, in appropriate cases, the Tribunal or any party to the proceeding may apply to the Ontario Court pursuant to the *Statutory Powers Procedure Act* for an order citing that person in contempt.

Consequences of Dismissal of Motion

- 7.04 In circumstances where the motion is held in the absence of the public and is dismissed, the Tribunal shall, in public, following the motion, order that the motion be treated as if the motion had been held in public.

RULE 8 CONDUCT OF HEARING

Agreed Statements of Facts

- 8.01 The parties are encouraged, to the extent possible, to enter into agreed statements of facts to be introduced as evidence at the hearing.

Documentary Evidence

- 8.02 In addition to providing a copy to the other party, any party tendering documentary evidence shall provide to the Clerk of the Committee
- (a) four copies of each document where the matter is being heard by a three Bencher Committee; or,
 - (b) two copies of each document where the matter is being heard by a single Bencher Committee, the HMT, or the CMT.

Evidence

- 8.03 (1) An affidavit or statutory declaration of a person is admissible in a proceeding in accordance with the *Law Society Act*.
- (2) An affidavit or statutory declaration for use at a hearing may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit or declaration but where, in the opinion of the Committee, better evidence could be adduced through direct evidence of a witness, the Committee may require the party to file or call such direct evidence and strike out the evidence filed.

Expert Reports

- 8.04 (1) The Society shall disclose all expert reports in its possession at least 10 days before the commencement of the hearing.
- (2) A party who intends to call an expert witness at a hearing shall, not less than ten days before the commencement of the hearing, serve on the other party a report signed by the expert setting out the expert's name, address, qualifications and the substance of the expected evidence of the expert.
- (3) No expert may testify, except with leave of the Committee, unless notice has been provided in accordance with this subrule or the parties consent.

Exclusion of Witnesses

- 8.05 (1) A Committee may order that one or more witnesses be excluded from the hearing until called to give evidence.
- (2) An order under subrule (1) may not be made in respect of a party to the proceeding or a witness whose presence is essential to instruct counsel for the party calling the witness, but the Committee may require any such party or witness to give evidence before other witnesses are called to give evidence on behalf of that party.
- (3) Where an order is made excluding one or more witnesses from the hearing, there shall be no communication to an excluded witness of any evidence given during the witness' absence from the hearing, except with the leave of the Committee, until after the witness has been called and has given evidence.

Visual or Audio Recording

- 8.06 (1) No person shall make a visual or audio recording or any part of a proceeding unless permitted by the Tribunal.
- (2) A request for authorization shall be made to the Tribunal prior to the commencement of the proceeding.
- (3) The Tribunal may permit the recording of a proceeding subject to such conditions as the Tribunal considers appropriate.
- (4) The Tribunal shall not permit the visual or audio recording of all or part of a proceeding if, in the opinion of the Tribunal, such recording would inhibit witnesses or disrupt the proceeding in any way.
- (5) If the recording of a proceeding is permitted, the following conditions apply:
- (a) only equipment which does not produce distracting sound or light shall be used; and
 - (b) equipment shall be positioned unobtrusively before the proceeding begins and shall not be moved while the hearing is in progress.

Court Reporters

- 8.07 (1) All proceedings shall be recorded by a qualified verbatim reporter.
- (2) The first party to order a transcript shall pay the cost of transcribing and shall file a copy of the transcript as part of the record.

Interpreters

- 8.08 (1) Where a party and/or a witness requires an interpreter, the party calling the witness shall notify the Committee, and provide an interpreter at the party's expense.
- (2) An interpreter shall be certified and independent and shall swear or affirm that he or she will interpret accurately.

Special Needs

- 8.09 Parties shall notify the Clerk of the Discipline Committee, or the Clerk to Convocation, as appropriate, as early as possible of any special needs of the parties or their witnesses.

RULE 9 CONDUCT OF PROCEEDINGS AT CONVOCATION MANAGEMENT TRIBUNAL AND AT CONVOCATION

Service of the Report

- 9.01 The Secretary shall serve upon the member a copy of the Report, a notice of the time and place of the Convocation that will consider the Report, a summons requiring the member to attend Convocation and a notice that

- (a) Convocation reserves the right to impose all penalties, including disbarment, in every case; and
- (b) Convocation will not necessarily offer the member an opportunity for an adjournment where a motion for a higher penalty is made at Convocation.

Convocation Management Tribunal (CMT)

- 9.02 (1) The CMT shall schedule the time that matters shall be considered by Convocation
- (2) The CMT shall hear motions with respect to the following matters:
- (a) adjournments in accordance with rule 2.05;
 - (b) the extension or abridgment of deadlines for filing of materials as set out in rules 9.02 to 9.05 or as previously ordered by the CMT;
 - (c) the materials to be filed with Convocation, including the content of materials and the number of copies to be prepared;
 - (d) procedural matters regarding motions to tender fresh evidence including, the form of the evidence, the contents of the affidavit or the Record Book of Further Evidence, the scope or conduct of a cross-examination, and the costs of transcripts and appointments before an official examiner; and,
 - (e) requests to strike out a Notice of Disagreement for failure to comply with these rules or any order of the CMT or Convocation.

Notice of Disagreement

- 9.03 (1) Where a party disagrees with the Report of the Committee including the Committee's recommendation as to penalty, that party shall serve a Notice of Disagreement and file a copy with the Clerk to the Discipline Committee, prior to:
- (a) the expiry of 30 days from the date of mailing of the Committee's Report; or
 - (b) the date on which Convocation is scheduled to consider the Report,
- whichever occurs first.
- (2) A Notice of Disagreement shall set out the grounds of disagreement and the disposition sought before Convocation.
- (3) Where a party does not deliver a Notice of Disagreement within the time prescribed in subrule (1), that party is deemed to have accepted the Report of the Committee, including the Committee's recommendation as to penalty, unless the party obtains the consent of the other party or an order from the CMT.

Uncontested Matters

- 9.04 Where all parties are deemed to have accepted the report of the Committee, Convocation shall decide whether to adopt the Committee's report including its recommendation as to penalty with or without receiving submissions from the parties.

Contested Matters

- 9.05 (1) A party delivering a Notice of Disagreement shall contemporaneously deliver a Certificate of the Contents of the Record Book listing the contents of the Record Book necessary for that party's purposes.
- (2) Within five days of delivery of a Certificate of the Contents of the Record Book, the other party shall deliver a Certificate of the Contents of the Record Book.
- (3) Subject to subrule (5), the contents of the Record Book shall contain the documents listed in the Certificate of the Contents of the Record Book or the Certificates of the Contents of the Record Book, as the case may be, unless ordered otherwise by the CMT.
- (4) Within twenty days of delivery of the first Certificate of the Contents of the Record Book, the party delivering a Notice of Disagreement shall prepare and file with the Clerk to Convocation, 45 copies of the Record Book.
- (5) (a) Where a party fails to deliver a Certificate of the Contents of the Record Book, that party shall be deemed to accept the other party's Certificate of the Contents of the Record Book, unless the party obtains the consent of the other party or an order from the CMT.
- (b) If a party which has accepted the other party's Certificate of the Contents of the Record Book seeks to rely before Convocation on additional material from the record, that party shall be responsible for producing a separate Record Book, at the party's expense, in accordance with the relevant portions of subrules (3), (4), and (6).
- (6) The Record Book shall contain, in consecutively numbered pages, the following:
- (a) a table of contents describing each document by its nature and date and, in the case of an exhibit, by exhibit number or letter;
- (b) a copy of each Notice of Disagreement;
- (c) a copy of the Committee's Report;
- (d) a copy of each document required;
- (e) all relevant transcripts or a list of all relevant transcripts together with a certificate of the court reporter confirming that such transcripts have been ordered and any deposit required for preparation of transcripts has been paid; and,

- (f) a copy of each Certificate of the Contents of the Record Book.
- (7) If only one party delivers a Notice of Disagreement, that party shall serve a factum on the other party within 15 days of the delivery of the Record Book.
- (8) If more than one party delivers a Notice of Disagreement, the Society shall serve a factum upon the other party within 15 days of the delivery of the Record Book.
- (9) Within 15 days of receipt of a factum, a party shall deliver a factum.
- (10) Each factum shall contain a concise statement, without argument, of the facts, issues to be argued, a concise statement of law and authorities relating to each issue and the order sought.
- (11) Each party shall deliver with a factum, a book of authorities unless the authorities to be relied upon are contained in Convocation's Standard Book of Authorities.
- (12) Each party shall file 45 copies of the factum and book of authorities with the Clerk to Convocation.
- (13) Where the party who files a Notice of Disagreement fails to file a factum or book of authorities in the time prescribed by this rule or by the CMT, the Notice of Disagreement shall be deemed to be abandoned, unless the party obtains the consent of the other party or an order from the CMT.

Motion to Tender Fresh Evidence

- 9.06
- (1) If a party seeks to tender evidence to Convocation which was not before the Committee, the party shall bring a motion before Convocation.
 - (2) The moving party shall serve on the other party
 - (a) a Notice of Motion setting out the grounds for the motion, and
 - (b) the affidavit or affidavits that the party seeks to tender within the time prescribed for service of the moving party's Certificate of Content of the Record Book.
 - (3) The evidence shall be given by affidavit unless the parties agree or the CMT orders otherwise and may contain statements of the deponent's information and belief if the source of the information and the fact of the belief are specified in the affidavit.
 - (4) The party adverse to the moving party may cross-examine the deponent of the affidavit before the special examiner in accordance with Rule 34 of the *Rules of Civil Procedure* after delivery of reply material, if any, and within 15 days of receipt of the motion.
 - (5) The cost of transcripts and appointments before the special examiner shall be borne by the party seeking to tender the further evidence unless the CMT orders otherwise.

- (6) Within ten days of the expiry of the time period prescribed in subrule (4), the moving party shall serve on the other party and file with the Clerk to Convocation, a Motion Record containing, in consecutively numbered pages, the following:
 - (a) a table of contents describing each document by its nature and date;
 - (b) the Notice of Motion;
 - (c) a copy of each affidavit with exhibits described and listed separately;
 - (d) a copy of each transcript; and,
 - (e) a copy of each exhibit marked during a cross-examination.
- (7) The moving party shall file with the Clerk to Convocation 45 copies the Motion Record containing the fresh evidence and such other documents as the CMT may order, within the time limit prescribed by the CMT.
- (8) Both parties shall be prepared to proceed with Convocation's consideration of the Report on its merits following a motion to tender fresh evidence before Convocation, in any event of the result of the motion.
- (9) Where the party who files a Notice of Motion to tender fresh evidence fails to file supporting materials in the time prescribed by this rule or by the CMT, the Notice of Motion to tender fresh evidence shall be deemed abandoned, unless the party obtains the consent of the other party or an order from the CMT.

Procedure Before Convocation

- 9.07
- (1) Oral argument before Convocation is not mandatory.
 - (2) The Treasurer or Acting Treasurer may specify the time allowed for oral argument.
 - (3) When the parties consent, submissions to Convocation may be made in writing by facta without oral argument.
 - (4) Where there is oral argument before Convocation, in the absence of an agreement to the contrary between the parties, the order of presentation of argument of the parties shall be as follows:
 - (a) where only one Notice of Disagreement is delivered, the party filing the Notice of Disagreement shall be the first party to make submissions to Convocation;
 - (b) where more than one Notice of Disagreement is delivered, the Society's counsel shall be the first to make submissions to Convocation; and
 - (c) where no Notice of Disagreement is delivered, the Society's counsel shall be the first to make submissions to Convocation.

Policy of Deference

- 9.08 (1) The Committee's findings of fact shall be accepted by Convocation unless:
- (a) the Committee's finding is patently unreasonable; or,
 - (b) the Committee lacked jurisdiction.
- (2) The Committee's finding of professional misconduct or conduct unbecoming a barrister and solicitor or conduct unbecoming a student member, and recommendations as to penalty shall be adopted by Convocation unless:
- (a) the Committee's recommendation or finding is based on an error of law or an error in principle; or,
 - (b) the Committee lacked jurisdiction.

RULE 10 COSTS

Motion for Costs by Society

- 10.01 (1) The Society may seek costs against a member in accordance with the *Law Society Act*.
- (2) The request shall be made by motion to the Committee hearing the matter at the conclusion of the hearing.
 - (3) Convocation, where it considers a Report, or the Committee, where a matter is not referred to Convocation, may order costs and may impose such terms or conditions as it considers appropriate.
 - (4) Where a member is ordered to pay costs the order shall specify the amount of costs awarded, the date by which the costs are payable, and the interest payable in the event of default, which shall be the post-judgment interest rate applicable in civil proceedings.
 - (5) Where an order requiring the payment of costs is not honoured, the order may be filed in the Ontario Court of Justice (General Division) and enforced as an order of the court pursuant to the *Statutory Powers Procedure Act*.

Motion for Costs by Member

- 10.02 (1) The member may seek costs against the Society pursuant to the *Law Society Act*.
- (2) A request for costs shall be made by motion to the Committee at the conclusion of the hearing the Complaint, and the Committee shall make a recommendation to Convocation with respect to costs.
 - (3) Convocation may order costs and may impose such terms or conditions as it considers appropriate.

Quantum of Costs

10.03 In considering the quantum of costs to be awarded, the Committee may take into account the failure of a party to comply with these Rules.

RULE 11 DECISIONS AND ORDERS

At Committee

11.01 A single Bencher sitting as a Committee including the HMT may refer any matter to a three Bencher Committee where the Bencher concludes that the matter is appropriate for consideration by a three Bencher Committee.

At Convocation

- 11.02 (1) Where Convocation adopts a Report, it shall announce its decision in public.
- (2) Convocation shall then impose the recommended penalty or set a date for the imposition of the recommended penalty.
- (3) Convocation shall set the date for the commencement of any suspension which may be imposed.

Reasons of Convocation

11.03 Convocation shall give written reasons in every case where Convocation does not adopt the Report.

RULE 12 REVIEW OF COMMITTEE DECISIONS

- 12.01 (1) The Committee, or the HMT, may at any time correct a typographical error, error of calculation, misstatement, technical error or other similar error in its decision or order without prior notice to the parties.
- (2) Whenever a Committee or the HMT exercises its authority under subrule (1), the Clerk of the Discipline Committee shall serve a corrected version of the decision or order, signed by the presiding member of the Committee, to the parties within thirty days of the correction being made, and, where the correction is made to a Report, copies of the corrected version shall be provided to Convocation for its consideration.
- (3) Where the Committee has decided to refer a matter to Convocation, the Committee retains its jurisdiction over a Complaint until the issuance of its Report.

RULE 13 REVIEW OF CONVOCATION DECISIONS

- 13.01 (1) Convocation, or the CMT, may at any time correct a typographical error, error of calculation, misstatement, technical error or other similar error in its decision or order without prior notice to the parties.

25th April, 1997

- (2) When considering a Report, Convocation may correct a typographical error, error of calculation, misstatement, ambiguity, technical error or other similar error in the Report without prior notice to the parties.
- (3) Convocation, or the CMT, may exercise the powers under subrules (1) and (2) either on its own initiative or at the request of a party.
- (4) Whenever Convocation exercises its authority under subrule (1), the Clerk of the Discipline Committee shall serve a corrected version of the decision or order, signed by the Treasurer and the Secretary, to the parties within thirty days of the correction.
- (5) Whenever the CMT exercises its authority under subrule (1), the Clerk of the Discipline Committee shall serve a corrected version of the decision or order, signed by the CMT, on the parties within thirty days of the correction.
- (6) Whenever Convocation exercises its authority under subrule (2), the Clerk of the Discipline Committee shall serve a corrected version of the Report on the parties within thirty days of the correction.

Form #4A

D[complaint number]

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER of [Member's name], of the
[City, Town, etc.] of [Place of residence], a
Barrister and Solicitor.

CONSENT TO HEARING BY SINGLE BENCHER COMMITTEE

Pursuant to s.9(3.1)(b) of Regulation 708 of the Law Society Act (R.R.O. 1990, as amended by O.Reg. 513/95), the Member and the Law Society (the "parties") hereby consent to this Complaint being heard by a single Bencher Committee.

The parties give this consent in the full understanding that, due to the nature of the Complaint, the parties, or either or them, have the right to a hearing before a Committee of three Benchers and the parties specifically waive that right.

DATED at Toronto, Ontario, this [date].

[Name of Member]

[Name of Society's counsel]

Form #4B

D[complaint number]

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER of [Member's name], of the
[City, Town, etc.] of [Place of residence], a
Barrister and Solicitor.

CONSENT TO HEARING BY PRE-HEARING CONFERENCE BENCHER

Pursuant to s.9(3.1)(b) of Regulation 708 of the Law Society Act (R.R.O. 1990, as amended by O.Reg. 513/95), the Member and the Law Society (the "parties") hereby consent to this Complaint being heard by a single Bencher Committee.

The parties give this consent in the full understanding that, due to the nature of the Complaint, the parties, or either or them, have the right to a hearing before a Committee of three Benchers and the parties specifically waive that right.

The parties further consent to naming [name of Bencher] as the single Bencher Committee, notwithstanding that he/she has acted as the pre-hearing conference Bencher.

The parties acknowledge that a pre-hearing conference has taken place before [name of Bencher] on[date] and that:

- a) the issues with respect to this Complaint have been thoroughly explored at the pre-hearing conference;
- b) a resolution has been agreed upon by the parties;
- c) the Solicitor admits [professional misconduct/conduct unbecoming];
- d) this consent has been given by the parties following the conclusion of the pre-hearing conference; and
- e) no aspect of the pre-hearing conference was contingent upon this consent.

The parties further acknowledge that the single Bencher Committee will conduct the hearing, make findings and recommend a penalty based solely upon the evidence placed and submissions made before him/her at the hearing.

DATED at Toronto, Ontario, this [date].

[Name of Member]

[Name of Society's counsel]

It was moved by Mr. MacKenzie, seconded by Ms. Sealy that pursuant to the authority granted by paragraph 27 of subsection 62(10) of the Law Society Act that Rule 56 be amended by adding the following subrule:

- (6) The electronic trust transfer requisition required to be signed by a member or other person under paragraph 4 of subsection 14 (10.3) of the said Regulation 708 shall be included in the Electronic Trust Transfer Requisition which is appended to these rules.

Carried

REPORT OF THE ADMISSIONS AND EQUITY COMMITTEE

Meeting of April 10th, 1997

Mr. Millar presented for Convocation's approval the proposals respecting amendments to the provisions for Articled Students' Rights to Appear Before Courts and Tribunals.

Admissions and Equity Committee
April 10, 1997

Report to Convocation

Purpose of Report: Decision Making

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS 3

AMENDMENTS TO THE PROVISIONS FOR ARTICLED STUDENTS' RIGHTS TO APPEAR BEFORE
COURTS AND TRIBUNALS 3

 NATURE AND SCOPE OF THE ISSUE 3

APPENDIX 1 6

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions & Equity Committee ("the Committee") met on April 10, 1997. Committee members in attendance were Philip Epstein (Chair), Robert Armstrong (Co-chair), Nora Angeles, Denise Bellamy, Tom Carey, Marshall Crowe, Allan Lawrence, Frank Marrocco, and Harriet Sachs. Staff in attendance were Meg Angevine, Laura Cohen, Thomas Kowall, Lynn Silkauskas, Elliot Spears, Sophia Sperdakos, and Alan Treleaven.
2. The Committee is reporting on one matter it considered. It seeks Convocation's approval of its proposals respecting amendments to the provisions for Articled Students' Rights to Appear Before Courts and Tribunals.

AMENDMENTS TO THE PROVISIONS FOR ARTICLED STUDENTS' RIGHTS TO APPEAR BEFORE COURTS AND TRIBUNALS

NATURE AND SCOPE OF THE ISSUE

1. Provisions for articulated students' rights to appear before courts and tribunals are approved by Convocation. The last occasion on which changes to the provisions were approved by Convocation was November, 1994. These provisions are set out at Appendix 1, which follows.
2. Convocation is requested to approve the following changes to the provisions for rights of appearance:
 - a) Students have been given certain specified rights of appearance in the Ontario Court of Justice and the Unified Family Court. As the Unified Family Court is no longer a separately designated court, reference to the Court in provisions B (ii) and (iii) should be deleted. The balance of the provisions relating to the Ontario Court of Justice would remain the same.
 - b) In order to clarify students' rights of appearance with respect to appearances on criminal law matters, specifically summary conviction matters and youth court matters,
 - (i) it should be made clear that the right to appear on summary conviction matters is not unconditional; and
 - (ii) a revised commentary under the explanatory notes of the provisions should be added.
3. The Committee proposes that the form of the motion for Convocation be as follows:

MOVED THAT THE PROVISIONS FOR ARTICLED STUDENTS' RIGHTS TO APPEAR BEFORE COURTS AND TRIBUNALS BE CONFIRMED SUBJECT TO BEING AMENDED AS FOLLOWS:

- a) Section B (ii) and (iii) will provide as follows:

"B. Articled Students-at-Law are permitted to appear on the following *civil* matters:

...

 - (ii) Matters brought without notice, provided no substantial rights will be affected, and consent matters before the Ontario Court of Justice and before the Registrar of the Ontario Court of Justice.
 - (iii) Simple contested interlocutory motions before the Ontario Court of Justice and the Registrar of the Ontario Court of Justice unless the result of such interlocutory motion could be to finally dispose of a party's substantive rights by determining the subject matter in dispute."
- b) Section C (ii) will provide as follows:

"C. Articled Students-at-Law are permitted to appear on the following criminal law matters:

...

 - (ii) Summary conviction matters in the Court of first instance, and on remands in indictable offences."

- c) The Explanatory Notes will be amended to add a new paragraph as follows:
- "2. Section C(ii) should not be interpreted to confer upon a student the unrestricted right to appear on a summary conviction trial in all instances. The articling principal is responsible to provide effective supervision to the student according to all the circumstances of the situation, including the complexity of the matter. This includes consideration of the possible consequences to the accused."
- d) The Explanatory Notes will be amended to expand the former paragraph 2 as follows:
- "3. Articled students' right to appear in Youth Court is guided by the same rules as for criminal matters heard in other courts. Therefore, articled students may appear on summary conviction matters in Youth Court subject to the qualification in note 2 above. They may, however, appear only on remands in indictable offence matters."
- e) The balance of the paragraphs in the Explanatory Notes will be renumbered 4 - 10.

APPENDIX 1

ARTICLED STUDENTS' RIGHT TO APPEAR BEFORE COURTS AND TRIBUNALS (NOVEMBER 1994)

- A. Rights of appearance conferred on student members in civil and criminal law matters are set out below. However, articling principals or supervising members are under an obligation to ensure in each case where student members are instructed to appear before courts or tribunals that:
- (i) the attendance of the articling principal or supervising member is not necessary in order to secure the client's rights, assist the court or for any other reason;
 - (ii) the matter is appropriate for the student's training, experience and ability; and
 - (iii) the student is properly prepared.
- B. Articled Students-at-Law are permitted to appear on the following civil law matters:
- (i) Contested motions, consent motions, and matters before the Masters and Registrars of the Ontario Court of Justice and before the Registrar of the Court of Appeal for Ontario, including references and assessments of costs.
 - (ii) Matters brought without notice, provided no substantial rights will be affected, and consent matters before the Ontario Court of Justice and the Unified Family Court and before the Registrars of those Courts.
 - (iii) Simple contested interlocutory motions before the Ontario Court of Justice and the Unified Family Court, and the Registrars of those Courts unless the result of such interlocutory motion could be to finally dispose of a party's substantive rights by determining the subject matter in dispute.
 - (iv) Subject to the discretion of a judge of the Ontario Court (General Division), on the passing of accounts in estate matters.

- (v) Examinations for discovery, examinations in aid of execution, examinations of witnesses on pending motions and cross-examinations on affidavits in support of interlocutory motions.
 - (vi) Assignment court matters in the Ontario Court of Justice.
 - (vii) Status hearings in the Ontario Court (General Division).
 - (viii) Applications in the Ontario Court (Provincial Division). Students may not appear on contested Crown Wardship Applications.
 - (ix) Proceedings before administrative tribunals in appropriate matters and the Small Claims Court.
 - (x) On any other matter where an agent has a right of appearance.
- C. Articled Students-at-Law are permitted to appear on the following criminal law matters:
- (i) Applications for adjournments in Ontario Court (Provincial Division).
 - (ii) All summary conviction matters in the Court of first instance, and on remands in indictable offences.
 - (iii) Any matter where an agent has a right of appearance.

Explanatory Notes

1. The Criminal Code provides for a number of offences where the Crown may elect to proceed either by way of summary conviction or by way of indictment. In terms of classification the offence is an indictable offence until the Crown elects to proceed by summary conviction. Authority for this position is to be found in the *Interpretation Act*, R.S.C. 1985, c. 1-21, s. 34(1), which provides:

Where an enactment creates an offence,

(a) the offence shall be deemed to be an indictable offence if the enactment provides that the offender may be prosecuted for the offence by indictment.
2. Articled students' right to appear in Youth Court is guided by the same rules as for criminal matters heard in other courts. Therefore, articled students are entitled to appear on all summary conviction matters in Youth Court. They may, however, appear only on remands in indictable offence matters.
3. Articled students have a right of appearance on all matters on which an agent may appear under the *Provincial Offences Act* except on appeals under Part III of the Act before a Judge of the Ontario Court (General Division).
4. Appearances by articled students at pre-trial conferences in the Ontario Court (General Division) have been expressly disapproved. However, articled students may appear at pre-trial conferences in Small Claims Court.

- 5. Under subsection B.(ii) civil law matters, students may not appear on motions for certificates of pending litigation and for interlocutory injunctions brought without notice.
- 6. Under subsection B.(iii) civil law matters, above, students may not appear, whether they appear on behalf of the applicant or respondent, on motions to strike pleadings on the ground of no reasonable cause of action or defence, or on motions for summary judgment, default judgment and dismissal on any ground, subject to the following limited exception. Students may appear on behalf of a responding party on a motion to dismiss an action on any ground, if such relief is merely alternative to the primary relief sought on the motion, and there is no reasonable prospect that dismissal of the action will be ordered. Students should appear on matters that are truly interlocutory in nature.
- 7. Students who commence work for their firms prior to the start of Phase One of the Bar Admission Course do not have the rights of appearance of articulated students. Their rights of appearance are limited to those of a summer student. A memorandum outlining appropriate tasks to delegate to summer students is available from the Placement Office of the Law Society.
- 8. Students may extend their rights of appearance into Phase Three of the teaching term of the course by completing an Agreement and Confirmation of Supervision form with their supervising lawyer and filing it with the Bar Admission Course office. The forms are available from the Bar Admission Course office.
- 9. Students who have successfully completed Phase Three and are awaiting their call to the bar can extend their rights of appearance by following the procedures outlined in paragraph 8 above.

.....

It was moved by Mr. Millar, seconded by Mr. Armstrong that the provisions for Articled Students' Rights to appear before Courts and Tribunals be confirmed subject to being amended as set out in the Report.

Carried

THE REPORT WAS ADOPTED

CONVOCATION ADJOURNED FOR LUNCHEON AT 11:45 P.M.

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

The Treasurer, Aaron, Adams, Armstrong, Arnup, Backhouse, Banack, Carey, Carpenter-Gunn, Carey, Carter, R. Cass, Chahbar, Copeland, Cronk, Crowe, Epstein, Feinstein, Finkelstein, Harvey, Lawrence, MacKenzie, Millar, Murray, Ortved, Puccini, Ruby, Sachs, Scott, Sealy, Stomp, Swaye, Thom and Wright.

.....

.....
IN PUBLIC
.....

REPORT OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

Meeting of April 10th, 1997

Professional Development and Competence Committee
April 10, 1997

Report to Convocation

Nature of Report: Policy and Information

TABLE OF CONTENTS

REPORT ON PROPOSED LAW SOCIETY RESPONSE TO RECOMMENDATIONS OF REPORTS ON SYSTEM OF CIVIL JUSTICE..... 2 - 14

(Policy and Information)

DEVELOPMENT OF NEW CHECKLIST ON IMMIGRATION.....14 - 15

(Information)

TERMS OF REFERENCE/COMMITTEE PROCESS

The Professional Development and Competence Committee ("the Committee") met on April 10, 1997. In attendance were Eleanore Cronk (Chair), Derry Millar, Susan Elliott (Treasurer), Michael Adams, Kim Carpenter-Gunn, Mary Eberts, Ron Manes, and Ronald Cass with staff members Hershel Gross, Sue McCaffrey, Janine Miller, Mary Shena and Susan Binnie.

1. The Committee is reporting on two matters
 - the Law Society's response to the Recommendations of Reports on Civil Justice;
 - a Checklist planned for development and publication by the Law Society.

2. This report contains:

- a proposal for how the Law Society should respond promptly to recommendations made by two recent inquiries in relation to civil justice. The recommendations reviewed originate in three Reports, one published by a Task Force of the Canadian Bar Association ("CBA") on *Systems of Civil Justice* in 1996 and two Reports from the Ontario Civil Justice Review ("CJR") in 1995 and 1996. The Committee report identifies recommendations to which the Law Society should respond and suggests approaches for responses to the CBA and the Government of Ontario. The report also addresses policy issues arising out of the three Reports, either for future Committee consideration or for consideration by a Task Force of Convocation. Lastly, the report identifies three significant areas of recommendations which the Committee will consider at future meetings.
- an information report on a Law Society Checklist planned for development in 1997 and future Committee plans for consideration of Checklist matters.

REPORT OF PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE ON PROPOSED LAW SOCIETY RESPONSES TO THE REPORTS OF THE CANADIAN BAR ASSOCIATION TASK FORCE AND THE ONTARIO GOVERNMENT ON THE SYSTEM OF CIVIL JUSTICE

3. Convocation is asked:

- ◆ to review the proposed responses as set out by the Committee in the report below. (See also a chart prepared by a Committee working group - at Appendix A in Convocation material.) Convocation may also wish to refer to the original recommendations from the reports of the CBA Task Force and the Ontario Civil Justice Review which are attached to the report at Appendix B;
- ◆ to confirm that the responses provide an accurate reflection of the Law Society's governance role and Law Society policies in the areas under review; (See Section A of the report.)
- ◆ to confirm that the Professional Development and Competence Committee should inquire into some policy issues arising from the Reports and that other policy issues should be referred to a Task Force of Convocation or another suitable body. (See Section B of the report.)

REPORT ON RECOMMENDATIONS OF REPORTS ON CIVIL JUSTICE

SUMMARY

4. A working group was struck by the Committee in January, 1997 to review the report of the Canadian Bar Association's Task Force on *Systems of Civil Justice* together with the first and second reports of the Ontario Civil Justice Review ("the Reports"). The group's task was to examine the recommendations of the three Reports from the perspective of the Law Society as a regulatory body and to make proposals for responses by the Law Society to the Canadian Bar Association and to the Ontario Ministry of the Attorney General. The Professional Development and Competence Committee reviewed and revised the Working Group's reports at its meetings on 13 March and 10 April, 1997 and is sending a report to Convocation with:

- a series of recommendations for responses to the two bodies concerned (Section A of this report), and
- a set of policy issues for future Committee or Task Force consideration (Section B of this report).

BACKGROUND

5. The CBA created the Task Force on Systems of Civil Justice in the spring of 1995 "to inquire into the state of the civil justice system in Canada and to develop strategies and mechanisms to assist in the continued modernization of the system." In August 1996 the CBA released the *Systems of Civil Justice Task Force Report* which contained 53 recommendations. (See Appendix B for recommendations of this Report). The Report was subsequently debated at the CBA Mid-Winter Meeting in February, 1997 and formally adopted. An implementation process is underway led by a national Implementation Team.
6. The Civil Justice Review was established in 1994 at the joint initiative of the former Chief Justice of the Ontario Court of Justice and the former Attorney General for Ontario. The Review's mandate was "to develop an overall strategy for the civil justice system in an effort to provide a speedier, more streamlined and more efficient structure which will maximize the utilization of public resources allocated to civil justice." In March 1995 the Review released its *First Report* which contained 78 recommendations. In November 1996 the Review released its *Supplemental and Final Report* containing 36 additional recommendations which supplement the recommendations in the *First Report*. (See Appendix B for recommendations of these Reports.) The Attorney General of Ontario has endorsed the CJR Report and plans are being developed to implement the technological and other proposals contained in the Report.
7. The Professional Development and Competence Committee established a working group in January, 1997 "to review the recommendations from the Reports and ... to suggest an approach to a review of the major issues from the Reports for the Law Society as a regulatory body." (Committee Report to Convocation, 24 January, 1997.)
The members of the working group were:

Helene Puccini (Chair)	Ronald D. Manes
Mary A. Eberts	Heather J. Ross
A. Hershel Gross (Staff member)	
8. The working group met several times and brought its first report to Committee in February 1997, when its mandate was identified as follows:

to review the recommendations in the Reports and to identify and comment on those which affect the governance role of the Law Society.

The working group also agreed it would be appropriate

to identify and comment on the recommendations which might have an impact on lawyers generally.

9. The working group presented a summary of potentially relevant recommendations to the Committee in February under seven main headings:
 - policy and implementation issues;
 - quality of client service issues;
 - alternative dispute resolution issues;
 - case management issues;
 - practice issues;
 - education and public information issues;
 - fees issues
10. In March, the full Committee reviewed a second working group report in which issues raised by the Reports were categorised as falling in five broad areas (see list in item 6. *supra*, excluding the areas of case management and practice). Starting from a perspective of *whether the issue raised is one to which the Law Society as the governing body of the profession ought to respond*, the Committee identified eleven out of twenty-four sets of potentially relevant recommendations as falling within the jurisdiction of the Law Society in terms of its governance role, and an additional six of interest to the Law Society but not forming part of its governance role.
11. The working group was asked by the Committee to reconsider each issue within the five main areas and to:
 - ♦ identify and prioritize those matters of interest to the Law Society as regulator and recommend what steps should be taken, if any, to react to recommendations in the Reports under these heads (Priority Regulatory Matters);
 - ♦ distinguish items where there could be a direct response from items that involve policy matters that should be brought back to Committee and possibly taken to Convocation (Policy Matters); and,
 - ♦ identify any items that should be addressed independently of the response to the Reports on Civil Justice as matters of institutional responsibility for the Law Society (Policy Matters).

SECTION A. RECOMMENDATIONS

12. The report of the Canadian Bar Association Task Force and the two reports of the Ontario Civil Justice Review together comprise more than one hundred and sixty-five detailed and, in some cases, interrelated recommendations. The Committee has organized and reviewed these recommendations and makes a number of comments and proposals for responses to the bodies making the recommendations.

PRIORITY REGULATORY MATTERS

13. The two Civil Justice Review Reports contained a number of recommendations to form working groups, task forces, advisory committees and implementation teams to deal with various aspects of Court Administration and procedure (See CJR1 #4, 38, 43, 64 and 76; CJR2 #3, 10, 11, 17, 33, 34).¹
14. As a regulatory matter, the Law Society's main concern would be that recommendations from any of these bodies (especially the overall implementation team and the ADR-related committees) could affect the standard of practice in the courts, the requirements for practice and the qualifications for being licensed to practice law - either directly or indirectly - and that drastic changes to the administration of justice could also affect the independence of the judiciary, the rule of law and the ability to pursue justice in the Courts.
15. Given that the Law Society's role statement has as its purpose the *advancement of the cause of justice and the rule of law*, any matter which touches on those areas is of *prima facie* interest to the Society. (See Role Statement Commentary, s. 8.1 - s. 8.5.)
16. It is recommended that Convocation direct the Treasurer to write to the Chair of the CBA Task Force Implementation Team to indicate that the Law Society would like to participate in the Ontario Implementation Committee for the CBA Task Force Report. The Ontario committee is considered the appropriate forum for the Law Society's participation because its work will focus on the operation of the civil justice system in Ontario rather than on issues such as communications and organization for implementation that will necessarily occupy the attention of the national team.
17. It is recommended that Convocation direct the Treasurer to write to the Civil Justice Review and the Ministry of the Attorney General to indicate that the Society wishes to participate in the further work of the Implementation Team (established pursuant to recommendation #76 CJR 1). This team is developing and executing a plan for implementing the recommendations contained in the First Report of the Civil Justice Review and the Law Society, as the governing body regulating the profession, should be represented in that process.
18. It is also recommended that the Treasurer be directed to express Convocation's wish to have the Law Society represented in any group which deals with the matter of ADR in a way which will involve lawyers or others becoming accredited providers of ADR services. (Note that the Committee addresses significant and broader ADR issues in this report at Items 33 and 34, below.)

¹ Note that references to the three Reports in Appendix B are identified as follows:

- CBA - Report of the CBA Task Force on the System of Civil Justice
- CJR 1 - First Report of the Ontario Civil Justice Review
- CJR 2 - Second Report of the Ontario Civil Justice Review

19. In light of the above proposals and in view of plans for the implementation of the recommendations of the Reports of the CBA Task Force and the Ontario Civil Justice Review, Convocation is asked to approve the appointment of a bencher by the Treasurer to meet with the CBA Task Force Implementation Chair and the head of the Civil Justice Review. This bencher (who should be identified in the Treasurer's letters to the President of the Canadian Bar Association and to the Chair of the Implementation Committee and to the Ontario Civil Justice Review) would be charged with discussing the Society's involvement and responsibilities in the process of Civil Justice review, reviewing the plans for establishing the various groups, committees and Task Forces recommended in the Reports, and determining the priorities which the government and the judiciary place upon them so that the Law Society can establish complementary priorities.
20. The Report of the CBA Task Force at Recommendation 39(a) and (b) suggests that mandatory dispute resolution training be included as part of law school and Bar Admission programs.
21. The Committee proposes that the Treasurer confirm to the Chair of the Canadian Bar Association Implementation Committee that ADR training has been included as a mandatory component in the Law Society's Bar Admission program since 1990. The time allocated to ADR training was increased in 1994 so that ADR components now constitute one element in the initial phase of the Program and are infused throughout most courses in the final or Third Phase. (In addition, the Law Society offers regular Continuing Legal Education programs in the field of ADR.) The Committee will also be reviewing the current ADR component of the Law Society Bar Admission Program to assess whether it fully responds to the recommendations in the CBA Report.
22. The same report suggests at Recommendation 49, that the CBA and the Council of Law Deans form a joint multi-disciplinary committee to propose a comprehensive legal education plan to assist in civil justice reform for the twenty-first century.
23. In the Committee's view, only the best legal education system is likely to lead to fulfilment of the goals set out for the education of lawyers in the CBA Report. Such a system would include a truly effective continuum in legal education (law school, Bar Admission Program, Continuing Legal Education) which does not exist at present. The recommendation for a "multi-disciplinary committee" formed by the CBA and the law deans excludes mention of law societies and, therefore, risks perpetuating the current disjointed state of legal education.
24. The working group proposes that the Law Society, as a service provider, should request representation in the multi-disciplinary committee's work. Convocation should direct the Treasurer to write to the Chair of the Task Force Implementation Committee and to the President of the CBA requesting representation and, if Recommendation 49 has not been amended, to point out to the President of the Canadian Bar Association the oversight in omitting mention of law societies from this recommendation.

B. POLICY MATTERS

25. In addition to the direct implications of the Reports for regulatory matters, which could result in policy questions depending on the method and nature of implementation of the recommendations, the Committee has identified two broad policy areas in the Reports which would benefit from further consideration:
26. Client Rights and Obligations - The Solicitor/Client Relationship
Several of the recommendations involve client relations, obligations or "rights" - for example: setting fees; service levels; quality assurance; and plain language forms and means of access to the courts. The broad policy question for the Law Society is whether the Society should regulate the solicitor-client relationship to the degree envisioned by the reports, that is to the level of establishing a "base line" standard of responsibilities to a client or an identification of "best practices." If so, the next policy question is how far such regulation should be extended?
27. In relation to the issues identified in the CBA Task Force Report at Recommendations #40-44, it is recommended that model statements of client rights and guidelines for discussions by lawyers with clients concerning fees, should be dealt with by the CBA with input from the Law Society through the Treasurer's Liaison Committee or through the Federation of Law Societies. (It is planned to begin related work in Committee, initially by reviewing information on standards of practice and quality assurance programs as one aspect of client rights.)
28. Alternative Dispute Resolution and the Law Society's position
In relation to the emphases in all the Reports on ADR, it is suggested that Convocation should recognise and identify major ADR questions that could present issues for the Law Society in its regulatory role and/or problems for lawyers in their roles as dispute resolvers.
29. More generally, the role of lawyers in the market for ADR needs to be defined. Related to this, there is an overarching need to define what the practice of law comprises and to establish an appropriate role for the Law Society as regulator.
30. More specifically, there are serious questions in relation to the activities of other persons who are untrained or unsupervised but who occupy the same or similar roles as members of the Law Society. Regulatory choices and decisions will have to be made by the Law Society in relation to ADR; these should include issues around mandatory mediation and lawyers from one province working as paralegals in another province for the purposes of mediation.
31. Regulation of Other Groups involved in the Administration of Justice
The Civil Justice Review Reports recommend that mediators and arbitrators be employed in the civil justice system and that they adhere to a certain standard and, presumably, a set of rules and regulations. This invites the question of who should regulate these groups?
32. The broad policy question is, if other groups such as arbitrators and mediators are working in the justice system, should they be regulated in the public interest and, if so, by whom? If they should be regulated is there a role for the Law Society as regulator? If a separate body regulates arbitrators how should the authority of the Law Society be recognized with respect to lawyer-arbitrators?

33. Convocation is urged to refer general issues relating to ADR either to the Futures Task Force or to a new Task Force or to another appropriate body. The Committee suggests, for example, that a third working group could be set up as part of the Futures Task Force to review the regulatory problems presented by ADR and to establish an appropriate role for the Law Society as regulator. At the same time, this working group should revisit the issue of regulation of paralegals. This group should be provided with the necessary research background to deal with the issue of whom the Law Society should regulate and what activities should be regulated. Alternatively, the Futures Task Force might be asked to consider with the Professional Development and Competence Committee whether a further working group should be created and the results of that discussion should be reported to Convocation.
34. With a view to a comprehensive treatment of ADR issues, the working group recommends:
 - a) that recommendations relating to ADR should be integrated with other Law Society issues relating to ADR, and to regulation of non-lawyer mediators and, possibly, paralegals;
 - b) that these issues be referred to the Futures Task Force and brought back to Convocation via the Committee with a recommendation as to whether they should be referred to a new working group of the Futures Task Force, to a new Task Force, or to another body for further consideration.
35. The Committee recognises a significant recommendation in the CBA Task Force Report concerning competence that enjoins law societies to enforce competence standards. The recommendation reads: That
 - #50 (a) *Law societies place greater emphasis in the future on the enforcement of competency standards, and*
 - (b) *in jurisdictions where legislative amendments are required to permit the vigorous enforcement of competency standards, such amendments be sought.*
36. The Committee proposes to consider this fundamental recommendation further. Given the work of the Law Society in reviewing the issue of competence already underway, it is anticipated that the Committee will enter into discussions with the Law Society's Competence Task Force as to the most appropriate venue and method for dealing with the issue of enforcement of competence as set out in the recommendation.
37. While the Committee recognises that the Law Society has carried out considerable work in the past on issues of *pro bono* work by lawyers and, similarly, that the Law Society has considered lawyers' responsibility to explain ADR options to clients, it suggests that there is a responsibility to reconsider the Rules of Professional Conduct in these two areas in relation to the recommendations in the Reports.
38. It is therefore proposed that the Committee consider at future meetings the issue of re-examining the Rules of Professional Conduct to see if they fully correspond to the recommendations of the Reports:
 - a) in relation to the obligation of lawyers in appropriate circumstances to provide *pro bono* services to those in need, and
 - b) in relation to the responsibility placed on a lawyer to advise clients of ADR options.

25th April, 1997

39. In the view of the Committee, it would be useful if a letter could be sent by the Treasurer to the Chairman of the CBA Implementation Committee outlining the role of the Law Society in post-call education, a role which is probably underplayed in parts of the Report.

INFORMATION

REPORT OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE ON DEVELOPMENT OF NEW CHECKLIST ON IMMIGRATION

40. In response to a report from Sue McCaffrey, Director of the Professional Standards Department, the Committee approved development of a new Checklist on Immigration Law. This Checklist will be published using funds budgeted for the purpose for 1997. A working group will be set up with Lorne Waldman as Chair to develop the Checklist.
41. The Committee will shortly consider appropriate areas for a 1998 Checklist (practice management is one possibility) and will also review costs of publication and options for future publication including electronic sites. (It is noted that the Law Society already publishes Checklists on its Website.)

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

- (1) Copy of the Professional Development and Competence Committee, Working Group on Recommendations of Reports on System of Civil Justice Chart of Issues, April, 1997. (Appendix A1 - A8)
- (2) Copy of the Summary of Task Force Recommendations. (Appendix B1 - B36)

It was moved by Ms. Puccini, seconded by Mr. Millar that the proposed Law Society responses to the recommendations relating to civil justice, be adopted.

Carried

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Meeting of April 10th, 1997

Re: Revised Rules of the Discipline Hearing Process

Mr. MacKenzie presented for Convocation's approval the Revised Rules of the Discipline Hearing Process.

It was moved by Ms. Cronk, seconded by Mr. Finkelstein that the word "misstatement" be deleted from Rules 12.01(1), 13.01(1) and 13.01(2).

Lost

It was moved by Ms. Cronk, seconded by Mr. Finkelstein that the words "without prior notice to the parties" be deleted from Rules 12.01(1), 13.01(1) and 13.01(2).

Carried

25th April, 1997

It was moved by Mr. Ruby, seconded by Mr. Swaye that Rule 9.08 re: Policy of Deference, be deleted and referred back to Committee for further consideration.

Carried

Mr. MacKenzie accepted as an amendment to Rule 9.08(1) that the word "shall" be changed to "would".

It was moved by Mr. MacKenzie, seconded by Mr. Ortved that the Revised Rules be adopted as amended.

Carried

It was confirmed that Convocation constituted itself as sitting both as a discipline committee as well as Convocation in dealing with the issue on the Revised Rules of the Discipline Hearing Process.

DEMOGRAPHIC STUDY

Ms. Katherine Corrick, Policy Secretariat Director, presented a Report on the results of the staff's investigations into the gathering of information about the profession.

Report to Convocation
April 25, 1997

Demographic Study

Purpose of Report: Information and Decision-Making
DEMOGRAPHIC STUDY OF THE PROFESSION

BACKGROUND

1. On November 29, 1996, following a discussion of *The Report on Member Services and Regulation*, Convocation asked staff to gather information on how demographic information about the profession could be collected to assist Convocation in governing the profession.
2. In response to that request, staff began investigating the possible sources of such information, both within and outside of the Law Society. Staff also asked three experts to submit proposals on how they would collect demographic information about the legal profession in Ontario, and the costs of the proposals. It was not intended that benchers would select one of the proposals. They were simply obtained to give benchers an indication of the varying methods available and their costs.

EXISTING DATA WITHIN THE LAW SOCIETY

3. Staff ascertained the existing demographic information about the profession at the Law Society. The Law Society has maintained a database of member information since 1989. Attached as Appendix A is a list of the information currently available on the database.

4. Additional demographic information is available from three studies conducted by the Women in the Legal Profession Committee. In 1989, the Committee published a study entitled *Women in the Legal Profession*, which was partly based on data collected from questionnaires distributed by the Law Society in 1987 and 1988. In 1991, the Committee published a second report, *Transitions in the Ontario Legal Profession*. This report was based on data collected from a survey of 1,597 lawyers called to the Ontario Bar between 1975 and 1990. In 1996, the Committee did a follow-up study of the lawyers who had been surveyed in the *Transitions* survey. The results of that study are contained in a document entitled *Barriers and Opportunities Within Law: Women in a Changing Legal Profession*, which will be distributed to benchers for May Convocation.

LPIC

5. Although LPIC collects certain information from the profession for its own use, it is unclear how useful that information will be to the Law Society. LPIC does not collect data on lawyers' incomes. It is only concerned with the amount of lawyers' billings. Furthermore, LPIC only has data relevant to the 16,000 insured members of the profession, leaving approximately 10,000 members out of their database.

EXTERNAL SOURCES OF DEMOGRAPHIC INFORMATION

6. Data can be purchased from Revenue Canada and Statistics Canada. Revenue Canada will analyze income tax returns by province and by occupation (as identified by the taxpayer on the income tax form), and can provide information such as the average income of Ontario lawyers for the past thirty years. The most recent data available from Revenue Canada is based on 1993 income tax returns. Data from the 1994 income tax returns will be available in June 1997.
7. Statistics Canada can provide information on the amount of money corporations and households spend on legal services. It also has data on lawyers' incomes. The most recent occupational data available from Statistics Canada is based on the 1991 census. Data from the 1996 census is expected to be available in June 1998.

PROPOSALS

8. Staff sought proposals on a demographic study from Professor John Hagan of the Faculty of Law at the University of Toronto, from Price Waterhouse, and from The Madison Avenue Demographics Group. The proposals are set out in Appendices B, C, and D, respectively. Although all three experts were responding to the same call for proposals, they have submitted very different proposals, both in terms of approach and related cost. These variations are likely indicative of the fact that "demographic study" has a wide range of meanings.
9. Professor Hagan's proposal (Appendix B) to conduct a survey of the profession will provide a snapshot of the current demographics of the profession. He proposes paying particular attention in the survey to members who have resigned or are suspended to address the concern of Convocation that many lawyers are suffering financially. The estimated cost of this proposal is \$15,000.

10. The Price Waterhouse proposal (Appendix C) focuses specifically on the issue of the economic viability of members in today's marketplace, which was identified by staff as one of Convocation's concerns. Price Waterhouse proposes to a) analyze the Law Society's current database, b) conduct focus groups of sole practitioners who have left the profession with a view to determining their reasons for leaving, and c) survey sole practitioners in their annual Law Firm Compensation Survey. The estimated cost of this proposal is \$29,125.
11. The proposal of The Madison Avenue Demographics Group (Appendix D) entails reviewing all of the available data on Ontario lawyers, both historical and current, to analyze historical trends and project future trends in the demographic structure of the legal profession. This Group also proposes to compare the demographic structure of the legal profession to the demographic structure of the population of Ontario to determine such things as the likely future demand for legal services and whether the likely future supply of lawyers will be able to meet that demand. The estimated cost of this proposal is \$53,790.

ISSUES FOR DISCUSSION

12. The varying approaches with their corresponding varying results and costs makes it critical to determine the use to which the information obtained will be put before pursuing this initiative further. The use will determine whether Convocation requires a snapshot of the demographics of the profession, or historical and projected demographic trends in the profession, or both.
13. If Convocation wishes to consider the steps the Law Society should take to assist members in financial need, it must first determine how many members are in financial need to properly assess the potential costs of any proposed steps. In this case, a snapshot of the demographics of the profession achieved through a survey will address the issue.
14. If Convocation wishes to determine the efficacy of initiatives implemented to eliminate discriminatory barriers in the profession against a particular group, it will require historical and current demographic information about both the particular group and the profession as a whole.
15. If Convocation wishes to use demographic information in a general way to inform its future policy development, it will require an analysis of projected trends in the profession.
16. An important part of any study undertaken should be to determine what data the Law Society should be collecting on an ongoing basis to keep abreast of demographic changes in the profession. It is anticipated that anyone conducting the study would be qualified to advise the Law Society on the most efficient and reliable means of collecting the necessary information.

PROCESS FOR DECISION MAKING

17. To undertake a demographic study of the profession, Convocation must first establish clear terms for the study, including the use to which the information will be put, and the precise information being sought. These terms will then be conveyed to those who will be asked to submit proposals.
18. A small group of benchers should be asked to develop such terms and provide them to Convocation in May.

APPENDIX A

MEMBER DATABASE INFORMATION

The following information dating back to 1989 is available in the Law Society's database.

- 1.Full name
- 2.Address - in 80% of the cases, we have only business address.
- 3.Telephone number
- 4.Fax number
- 5.Birthdate
- 6.Sex
- 7.Languages spoken
- 8.Date of call to the bar
- 9.Pre-call education, including university attended, highest law degree, year of degree.
- 10.Route of admission - transfer candidate from other province, Bar Admission Course, student approved by National Committee on Accreditation of Foreign Trained Lawyers
- 11.Employment status of member
 - a. sole practitioner
 - b. partner in law firm
 - c. employee or associate in law firm
 - d. employed - legal aid
 - e. employed - education
 - f. employed - government
 - g. elected official
 - h. employed - private industry
 - i. employed - non-profit organizations
 - j. retired or not working
- 12.Major field of law practised
- 13.Hours of work per week
- 14.Weeks of work per year
- 15.Members who have been suspended at some time.
- 16.Members who have been readmitted.

Since 1994, the following data has been collected.

17.Whether members have made substantial use of their legal skills on a regular basis in their current work.

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

- (1) Copy of a Memorandum from Professor John Hagan, University of Toronto to Ms. Katherine Corrick dated March 25, 1997 re: Potential Survey Research on Legal Profession.
(Appendix B)
- (2) Letter from Mr. Scott Nowlan, Principal Consultant, Price Waterhouse to Ms. Katherine Corrick dated March 25, 1996.
(Appendix C)
- (3) A copy of a Proposal to Conduct an Environmental Scan of the Legal Profession in Ontario and to Provide Other Services Related to Strategy Development submitted to the Law Society of Upper Canada by The Madison Avenue Demographics Group, March 18, 1997.
(Appendix D)

25th April, 1997

Following the discussion, it was decided that a small steering group of Benchers would pursue the matter and report back to Convocation.

SEARCH WARRANTS

Mr. Ruby reported on the results of his communications with the Ministry of the Attorney General's office on the issue of who bears the costs when lawyers' offices are subject to search warrants.

It was moved by Mr. Ruby, seconded by Mr. MacKenzie that the Treasurer continue with discussions with the Attorney General on this matter.

Carried

(Copy of Memo and attachments in Convocation file)

REPORTS PRESENTED FOR INFORMATION ONLY

The following Reports were presented for information only:

Competence Task Force - Progress Report
Legal Aid Committee Report

Competence Task Force - Progress Report

Report to Convocation
April 25, 1997

Competence Task Force - Progress Report

Purpose of Report: Information

NATURE AND SCOPE OF THIS REPORT

1. On February 28, 1997 Convocation approved the Terms of Reference for the Competence Task Force. Pursuant to the Terms of Reference Phase I of the Task Force was directed to:
 - a) Review the major studies conducted on competence and lawyers.
 - b) Begin to consider for what possible purposes the definition of competence must be capable of being used, so as to be able to choose an appropriately versatile working definition.
 - c) Provide Convocation with an outline for its work and a time line for completion of Phase I. The Task Force would also use this opportunity to present to Convocation any supplemental questions or issues on which it may need direction. This would be done at the April 25 Convocation.
 - d) Choose/articulate a working definition - (possibly 2 so as to provide Convocation with options).
 - e) Provide Convocation with an interim report on a definition for its approval at June Convocation.

25th April, 1997

- f) Return to an analysis of the purposes for which the definition should be used. In other words, consider what the role or responsibility of the Law Society should be in the competence of its members - developing, maintaining, improving, enforcing. The Task Force would refine the definition to ensure it conforms with its conclusions.
 - g) Provide Convocation with a final report on Phase I at November Convocation including an outline for how Phase II should proceed.
2. The Task Force is reporting on its work to date.

BACKGROUND

3. The Task Force membership was finalized at the beginning of April, 1997. The members of Phase I of the Task Force are benchers Philip Epstein (Co-chair), Derry Millar (Co-chair), Nora Angeles, Robert Armstrong, Tom Carey, and Elvio DelZotto; Dean Marilyn Pilkington, Dean of Law at Osgoode Hall Law School; Caron Wishart, LPIC Vice-president: Claims, and practitioners William Friedman and Margaret Ross. Sophia Sperdakos and Alan Treleaven are the staff members to the Task Force.
4. At its first meeting on April 7, 1997, the Task Force members considered the Terms of Reference and is reporting to Convocation on the organization of its task and its projected time line.

TASK FORCE MANDATE

5. The Task Force's mandate is to consider the studies that have previously been done on lawyer competence and consider how those studies can be adapted to the Law Society of Upper Canada's needs, to provide the framework for a working definition of competence.
6. The Task Force members have begun the literature review and have had preliminary discussions about the various purposes for which a working definition could be used. Each Task Force member is to begin working on the possible components of a working definition of competence, using previous studies as a framework for the analysis.
7. The Task Force will meet on April 24, May 12, May 26, June 9, and June 23.

REPORTING

8. As the Terms of Reference require, the Task Force will provide Convocation with a draft working definition for its evaluation. It is hoped that this will be presented to Convocation in June.
9. The Terms of Reference for the Task Force stated that the Task Force would report to Convocation in April with a proposed budget for a consultation process. The Task Force is of the view, however, that such an analysis is premature at this time.

- 10. Until such time as the Task Force has had the opportunity to do more work on the definition itself, it is difficult to assess the breadth of consultation that will be necessary. The Task Force is of the view that it should make proposals for the consultation process when it provides Convocation with its preliminary working definition for its consideration.

Legal Aid Committee

Legal Aid Committee
April 9, 1997

REPORT TO CONVOCATION

Nature of Report: Information

TABLE OF CONTENTS

Committee Process.....1

 MOU Planning Team.....1

 Osgoode Hall Study on Legal Aid (Zemans and Monahan report.....1

 Prioritization of the policy issues list.....1

 Update on duty counsel financial eligibility testing.....1

 Duty counsel clinics.....1

 Update on implementation of the Child Support Guidelines.....2

 Financial Reports.....3

 Monitor's Reports.....3

 Audited financial statements.....3

 Quarterly financial statements.....3

Appendix A - Financial Reports - March 1997

The LEGAL AID COMMITTEE met on April 9, 1997. In attendance were:

Committee members: Mary Eberts (Chair), Heather Ross (Vice-Chair), Tom Carey , Carole Curtis, Allan Lawrence.

The Treasurer, Susan Elliott

Senior Management of OLAP: Robert Holden, Provincial Director, and Deputy Directors George Biggar, Ruth Lawson and David Porter

Other OLAP Staff: Elaine Gamble, Communications Coordinator, Felice Mateljan.

The following matters are reported on for information only:

1. MOU Planning Team

The Chair updated the Committee on the plans for a planning team to oversee the end of the MOU with the government. Plan management is to provide a list of issues to be covered by the team.

25th April, 1997

2. Osgoode Hall Study on Legal Aid (Zemans and Monahan report)

The Director gave an overview of the themes contained in the report. The Committee decided to prepare a submission to the McCamus Review on Legal Aid which details some of the inaccuracies and misconceptions in the Osgoode Hall report.

The Committee will invite Professor McCamus and member of his review team to the Legal Aid Committee meeting May 7 to discuss the Law Society/OLAP submissions to his review.

3. Prioritization of the policy issues list

In view of the work done so far this year, the Committee revisited the list of priorities established at the beginning of this year and developed a workplan for the rest of the year.

4. Update on duty counsel financial eligibility testing

George Biggar updated the Committee on Phase I of the testing which is now up and running in six sites: Ottawa, Sault Ste. Marie and area, Chatham, Hamilton, the family court in North York, and the criminal court at College Park in Toronto. Training was held in all six sites, and although controversial, most members of the bench and the bar have been supportive.

5. Duty counsel clinics

Duty counsel clinics are currently operating in 38 locations across the province. These clinics provide between two to four hours of summary advice on civil law matters once a week.

The Committee has decided to consolidate and standardize some of the services now provided in family law through duty counsel clinics. Plan management will develop a plan to run duty counsel clinics in all areas of the province. They will be run under the existing rules for duty counsel clinics and financial eligibility testing will apply to all clients attending these clinics (if implemented province-wide).

In addition, a brochure will be developed which outlines all the options available if you need to find a lawyer or get legal advice. The brochure/information sheet will include information on duty counsel clinics, dial-a-law, lawyer referral service, legal aid and community clinics.

6. Update on implementation of the Child Support Guidelines

The new federal legislation governing child support guidelines comes into effect May 1, 1997. After this date, all new child support orders will no longer be tax deductible for the payer, nor taxable income for the payee. In addition, the legislation establishes standard guidelines for child support payments by non-custodial parents based on the gross income of the payer.

These new guidelines could cause a change in circumstances for many parents which will allow them to request changes to their existing child support payments through the courts. The new legislation is complicated and not easily interpreted without a lawyer's advice.

25th April, 1997

Since September 1996, the Ontario Legal Aid Plan (the Plan) has been actively involved in regular meetings with representatives of the federal and provincial governments to prepare for the possible consequences of this new legislation for the justice system and legal aid.

The Plan expects that the demand for legal aid will increase as a result of this legislation. Many of our clients - people who are financially eligible for legal aid - are being given the legal right to apply for changes to their child support orders, and will expect assistance from legal aid.

Due to its capped funding agreement with the government, the Plan is unable to provide additional services without additional funding commitments. The Memorandum of Understanding signed with the Ontario Government in September 1994 states clearly that the government will renegotiate the funding commitment if it undertakes major new initiatives which substantially increase the legal aid caseload.

The federal government has allocated \$18 million for Ontario to be spent over five years to deal with the expected influx of demand for access to justice but the provincial government has refused to allocate any of that money to legal aid to help poor and lower income people.

The new legislation places tremendous pressure on an already limited and underfunded legal aid plan. The Plan turned away 29 per cent of all applications for legal aid last year, an increase of 14 per cent since 1992/93.

Under the current funding levels, the Plan may be able to offer the following services:

- Clients may receive advice from duty counsel lawyers in the courts. Duty counsel may also be able to assist in reviewing documents. Financial eligibility testing will apply to all clients in the six Phase I areas where testing is taking place.
- 38 duty counsel clinics across the province are available where clients may receive summary advice and help preparing court documents. As outlined above, the plan is hoping to expand this service across the province. With the current situation in our courtrooms of high numbers of unrepresented people, this new legislation and the unwillingness of the two governments to provide proper funding for access to the justice system could cause further overcrowding and delays.

7. Financial reports

The financial reports for March 1997 are attached.

8. Monitor's report

The Monitor's report for February has not yet been received.

9. Audited financial statements

The auditors will begin working on the financial statements for the year ended March 31, 1997 in April and expect to be able to sign off on them by the end of June. The Committee will approve the statements at its June meeting.

25th April, 1997

10. Quarterly financial statements

The Plan has signed a contract with Hyperion to provide quarterly financial statements done on an accrual basis. The first quarterly statement will be done at the end of June, 1997.

Attachments

1. Financial Reports - March 1997

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

Copy of the Financial Reports for March 1997.

CONVOCATION ROSE AT 4:00 P.M.

Confirmed in Convocation this **23** day of *May*, 1997

[Signature]
Treasurer