

MINUTES OF CONVOCATION

23rd February, 1996
9:00 a.m.

PRESENT:

The Treasurer (Susan Elliott), Aaron, Adams, Angeles, Armstrong, Arnup, Backhouse, Bobesich, Carey, Carpenter-Gunn, Carter, R. Cass, Cole, Copeland, Cronk, Crowe, Curtis, Eberts, Epstein, Farquharson, Feinstein, Gottlieb, Goudge, Lamek, Lamont, Lawrence, Legge, MacKenzie, Manes, Marrocco, Millar, Murphy, Murray, O'Brien, O'Connor, Pepper, Puccini, Ross, Ruby, Sachs, Scott, Sealy, Stomp, Swaye, Thom, Topp, Wilson and Wright.

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IN PUBLIC

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CALL TO THE BAR

The following candidates were presented to the Treasurer and Convocation and the degree of Barrister-at-law was conferred upon each of them. They were then taken by Mr. Gottlieb before Mr. Justice Day to sign the Rolls and take the necessary oaths.

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| Bruce Alexander Adamson | 37th Bar Admission Course |
| Noel Keith Brown | 37th Bar Admission Course |
| Kelly Ann Burke | 37th Bar Admission Course |
| Brian Jeffrey Cohen | 37th Bar Admission Course |
| Derek Scott Flaman | 37th Bar Admission Course |
| Bryan John William Handsley | 37th Bar Admission Course |
| Gareth Peter Jacobs | 37th Bar Admission Course |
| Maumud Jamal | 37th Bar Admission Course |
| Lorie Anne Jodrell Anderson | 37th Bar Admission Course |
| Daniel John Lokum | 37th Bar Admission Course |
| Christine Markus | 37th Bar Admission Course |
| Susan Elizabeth McDonald | 37th Bar Admission Course |
| Isaura Medeiros | 37th Bar Admission Course |
| Kelly Irene Mulcair | 37th Bar Admission Course |
| Matthew-Todd Ordower | 37th Bar Admission Course |
| Heather Joy Ritchie | 37th Bar Admission Course |
| Levi Sankar | 37th Bar Admission Course |
| Jacqueline Rose Solnik | 37th Bar Admission Course |
| Ian Christopher Whan Tong | 37th Bar Admission Course |
| Barbara Ethelwyn Foster | Transfer, Province of
Saskatchewan |
| Said Mohammedally | Transfer, Province of Alberta |
| Michael Alan Smith | Transfer, Province of Alberta |
| Jay Lawton Spare | Transfer, Province of British
Columbia |

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COMMITTEE APPOINTMENTS

It was moved by Mr. Armstrong, seconded by Mr. Cole:-

THAT Margaret O'Sullivan be appointed to serve as a member of the Equity in Legal Education and Practice Committee.

THAT Mary Eberts be appointed Vice-Chair of the Legal Aid Committee.

THAT Frank Marrocco be appointed Chair of the Title Insurance Committee.

THAT Allan Lawrence be appointed to serve as a member of the Government Relations Committee.

THAT Elvio DelZotto be appointed to serve as a member of the Finance and Administration and Government Relations Committees.

Carried

AGENDA - Committee Reports Taken as Read

It was moved by Mr. Armstrong, seconded by Mr. Cole THAT the Reports listed in paragraph 3 of the Agenda (Reports to be taken as read) including the Real Estate Issues Committee Report, be adopted.

Draft Minutes - December 1995 & January 1996
Equity in Legal Education and Practice
Legal Education
Professional Conduct
Real Estate Issues
Reasons - Jairus Hamilton Maus
Specialist Certification Board

Carried

COMMITTEE REPORTS

Draft Minutes - December 7, 8 & 9, 1995 and January 25 & 26, 1996

THE DRAFT MINUTES WERE ADOPTED

(see Draft Minutes in Convocation file)

Equity in Legal Education and Practice Committee

Meeting of February 8, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 8th of February, 1996, the following persons being present: Nancy Backhouse (Chair), Paul Copeland, Helene Puccini, Nora Richardson, Andre Chamberlain, Judith Keene, Marie Moliner, Ramneek Pooni, Jocelyn Churchill, Mimi Hart and Alexis Singer.

C.
INFORMATION

C.1 Bicentennial Equity Project

C.1.1 The Equity in Legal Education and Practice Committee will submit a Bicentennial Equity Project proposal to the bicentennial Committee for consideration.

C.2 Lawyer Referral Service

C.2.1 After discussion of the issues in having referrals made on the basis of race and ethnicity pursuant to Section 14 of the Ontario Human Rights Code, the committee agreed that because of the complexity of the matter to defer its recommendation until it can be considered by a subcommittee which will be struck to deal with the *Report to the Commission on Systemic Racism in the Ontario Criminal Justice System*.

C.3 The Butterworth Education Equity Awards

C.3.1 The Chair will contact the staff at Butterworths to advise that the basis on which the award is granted each year should accord with the expanded mandate of the Equity in Legal Education and Practice Committee.

C.4 Rule 28

C.4.1 The bulletin on Partnership and Relations with Other Members of the Profession will be redrafted by Judith Keene and then circulated to the designated committees for approval prior to its going to print. The committee noted that staff training issues with respect to Rule 28 are still outstanding. Judith Keene will continue to draft the bulletins discussing reasonable accommodation and service to clients.

C.5 Report to the Commission on Systemic Racism in the Ontario Criminal Justice System

C.5.1 The recommendations of the *Report to the Commission on Systemic Racism in the Ontario Criminal Justice System* are attached to this report for information purposes.

C.5.2 A subcommittee consisting of the Chair, Nora Richardson, Andre Chamberlain, Judith Keene, Brigid Luke, Marie Moliner and Ramneek Pooni has been struck to meet and examine the report to streamline the recommendations and bring a plan forward to Convocation for adoption of the report or portions of it. The Chair will approach the Treasurer about raising the issue of the response to the report in a future Benchers Bulletin.

C.5.3 Further, pursuant to a memorandum which the Equity Committee received, it is suggested that the possibility of having David Cole speak to the Benchers about the report be considered. The Chair will advise the Attorney General's office that the subcommittee has been struck to examine the report.

C.6 Canadian Bar Association of Ontario - Equal Opportunities Section

The Chair reported that there will be a meeting of the Equity Opportunities Section of the Canadian Bar Association of Ontario on Thursday, February 15, 1996. The High Commissioner from the Republic of South Africa will be the guest speaker.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February, 1996

N. Backhouse
Chair

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

Item C.-C.5.1 - Copy of the recommendations of the Report to the Commission on Systemic Racism in the Ontario Criminal Justice System.
(pages 415 - 432)

THE REPORT WAS ADOPTED

Legal Education Committee

Meeting of February 8, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Committee met on Thursday, the 8th of February, 1996, at 10:30 a.m.

The following members attended: Philip Epstein (Chair, except for item C.1), Derry Millar (Vice-chair in the Chair for item C.1), Gavin MacKenzie (Vice-chair), Robert Armstrong, Larry Banack, Tom Carey, Dean Neil Gold (University of Windsor), Stephen Goudge, Dean Marilyn Pilkington (Osgoode Hall Law School), Helene Puccini, and Allan Lawrence. Jay Rudolph (Chair, Articling Subcommittee) and Dean Donald Carter (Queen's University) also attended. The following staff attended: Marilyn Bode, Katherine Corrick, Brenda Duncan, Mimi Hart, Ian Lebane, Alexandra Rookes, and Alan Treleaven.

A.
POLICY

A.1 ARTICLING SUBCOMMITTEE ABRIDGMENTS

A.1.1 The Articling Subcommittee asked the Legal Education Committee to consider a change to two of the four categories of abridgment of articles set out in section 14 of the *Proposals for Articling Reform Report*, approved by Convocation in October 1990, attached. (pages 1 - 3)

- A.1.2 The new transfer regulations necessitate a review of abridgment categories 14.1.1 and 14.1.2. The Law Society's suggested amendments to the transfer regulations were approved by the Lieutenant Governor-in-Council on December 14, 1995. A copy of the new section 4 of Regulation 708 under the *Law Society Act* is attached (pages 4 - 5). The Articling Subcommittee supports the recommendation of the Articling Director to grant more generous abridgments to individuals who have completed a Bar Admission Course in another province or territory of Canada and who may also have some practice experience. The Subcommittee expects that the majority of these individuals will take advantage of the new transfer requirements. However, it anticipates that some individuals may prefer to pursue their Ontario call by enrolling in part of the Bar Admission Course, or that if their practice experience is too dated, they may not wish to article for 17 months in order to become eligible to sit the transfer examinations.
- A.1.3 A chart setting out portions of the course abridgment candidates must complete under the existing sections 14.1.1 and 14.1.2 and the recommendations for change to the categories is attached. (page 6)
- A.1.4 The Legal Education Committee, adopting the recommendations of the Articling Subcommittee, recommends approval of the changes (bolded below) to sections 14.1.1 and 14.1.2 for candidates who enrol in the Bar Admission Course, to read as follows:
- 14.1.1. Abridgment to four months based on experience in another province
- Candidates who have been admitted to the Bar of another province following successful completion of a full Bar Admission Course, including articling in that province, may be permitted by the Articling Director to serve an abridged four-month period of articles in Ontario, including a maximum of two weeks of vacation.
- 14.1.2 Waiver of articles based on experience in another province
- Candidates who have been admitted to the Bar of another province and have practised in that province for at least one year, but less than three years, may be permitted a waiver of articles by the Articling Director.

B.
ADMINISTRATION

There are no Regular Business and Administration matters being reported this month.

C.
INFORMATION

- C.1 QUEEN'S PROPOSAL FOR COORDINATED LL.B.-M.I.R. CO-OPERATIVE PROGRAM
- C.1.1 Dean Donald Carter of Queen's University Faculty of Law has requested approval of a new co-operative program to be jointly offered by the Queen's Faculty of Law and the Queen's School of Industrial Relations. The proposal is supported by the Deans of the five other Ontario law schools.

- C.1.2 The Committee began considering the proposal in January, and continued its deliberations at the February 8 meeting. Dean Carter attended the February 8 meeting.
- C.1.3 The proposed four year program includes 11 months of co-operative placement with approved practising lawyers in the labour law field. The 11 month co-operative placement would be divided into 3.5 months at the end of the second year of academic study and 7.5 months at the end of the third year of academic study. Following completion of the second co-operative placement term, students would return to the law school for a final academic term of approximately four months in length. Graduates would receive both the LL.B. and Master of Industrial Relations degrees at the conclusion of the program.
- C.1.4 The proposal contemplates that graduates would satisfy the articling requirement by the 11 months of co-operative placement, and be permitted to satisfy the remaining Bar Admission Course requirements by completing Phases One and Three of the Bar Admission Course consecutively following their university graduation. Students would be eligible for Call to the Bar at the same time as students in the regular LL.B. program.
- C.1.5 The academic content of the Queen's program does not require Law Society approval, as it falls within the current terms of approval of the Queen's LL.B. Satisfying the articling requirement through the 11 months in co-operative placement does, however, require approval. Such approval would be an exception to the current policy that students not receive credit toward the articling requirement for time spent working in a law firm prior to completing law school.
- C.1.6 The Legal Education Committee and Convocation approved a co-operative legal education proposal from Queen's University in October of 1989, although Queen's University has never gone ahead with that proposal. Approval of the former proposal is reflected in subsection 23(6) of Regulation 708, which must be read in conjunction with subsection 23(5). (page 7)
- C.1.7 The current proposal permits only five students each year to enter the program. Dean Carter informed the Legal Education Committee that each student placement would be under the direct supervision of a qualified member of the Law Society who is practising labour law.
- C.1.8 One concern, which needs to be resolved, is that articling students currently have rights of appearance before courts and tribunals, which have been approved jointly by the Law Society and by the Chief Justice. It is currently a requirement that to be an articling student a student must be a holder of either an approved LL.B. degree or a Certificate of Qualification from the National Committee on Accreditation. Students in the Queen's co-operative program would not yet have been granted an LL.B. degree. If students in the co-operative program are to have the same rights of appearance before courts and tribunals as the current articling students, it would be necessary to procure the approval of the Chief Justice.
- C.1.9 A related concern is that the Law Society have legislative authority to govern students who are in the co-operative placement terms, even though they would not yet have graduated from law school.

- C.1.10 The Committee considered a recommendation that
- 1) the Queen's University proposal be approved, subject to each co-operative student placement being approved and conducted in compliance with the Law Society's educational and documentation requirements that are in place for articling, and
 - 2) Queen's University and each articling principal for the co-operative placements be responsible for contacting the Articling Director to ensure compliance with the Law Society's educational and document requirements for each student placement.
- C.1.11 The Committee approved the proposal in principle, and referred it to the Articling Subcommittee. The Subcommittee will review a detailed educational proposal on the content of the 11-month experience component from Queen's University and each potential articling placement. The Subcommittee will also consider how the other articling-related concerns raised by the Committee might be addressed, including those matters referred to in paragraphs C.1.8 and C.1.9 above. The Articling Subcommittee will report back to the Legal Education Committee.
- C.2 DE-DESIGNATION OF BAR ADMISSION COURSE FOR CANADA STUDENT LOANS
- C.2.1 The Director of Financial Aid, Mimi Hart, has received from the provincial Ministry of Education and Training a memorandum issued in November 1995 by Human Resources Development (Canada) announcing the immediate de-designation of courses offered by provincial law societies. (pages 8 - 9)
- C.2.2 A significant impact of de-designation of the Bar Admission Course is that students in Phase Three of the Bar Admission Course would not be eligible to receive assistance from the Canada Student Loan Program, a program that is available to students in law school, and that currently provides up to 60 percent of the financial assistance allocated to qualified students in Phase Three (approximately \$2,475 in 1995).
- C.2.3 Ms. Hart indicates that the implications may be broader than just financial assistance during Phase Three, as eligibility for interest-free status on outstanding loans during Phase Three, the ability to use RESP funds to finance Phase Three, and eligibility for other tax benefits appears to be contingent upon the student being enrolled in a "designated" program.
- C.2.4 Ms. Hart indicates that the de-designation would have an impact on approximately 40 percent of Bar Admission Course students.
- C.2.5 Ms. Hart is preparing a reply to the federal government memorandum. She has also opened discussions with provincial authorities in the hope of securing a commitment that the provincial student aid program will extend additional assistance to Phase Three students in the event the federal position is immutable. The provincial government could take one of two positions: extend additional support to Phase Three students to replace lost federal aid in whole or in part, or withdraw provincial support for the program in line with the federal position.

C.2.6 The loss of government sponsored student assistance for students in the Bar Admission Course would create serious access issues for students who must rely on student aid to complete their legal education. In the event government assistance is not available or is severely restricted, the Law Society will be called upon to consider whether it would ensure that an alternative student financial aid program is available.

C.2.7 The Committee decided to refer this urgent matter to the Government Relations Committee, at the suggestion of its Chair, Stephen Goudge.

C.2.8 Progress on this matter will be reported at future meetings of the Legal Education Committee and Convocation.

C.3 1995-1996 ARTICLING PLACEMENT REPORT

C.3.1 Of the 1,188 students seeking articles in the current (1995-1996) articling term:

- 1,142 (96.13%) have secured a permanent position;
- 16 (1.35%) are volunteering their time or articling for modest remuneration while continuing to search for a position offering remuneration in the normal range;
- 4 (.34%) completed Phase Three in 1995 and began their search for articles in January 1996;
- 7 (.59%) are no longer in contact with the Placement Office and are presumed to have suspended their search for articles; and,
- 19 (1.6%) are unplaced and seeking articles.

C.3.2 The Society's current Articling Vacancy List for 1995-1996 advertises 11 available positions. In addition, there are eight available positions with Community Legal Clinics on the Interim Voluntary Articling List.

C.3.3 Students commencing articles after September 1 are permitted to suspend their articles to attend Phase Three on schedule in 1996 and to complete any remaining portion of their articles following Phase Three. Unplaced students have been reminded of this accommodation by the Placement Office.

C.3.4 As of December 31, 1994, 11 students (1 percent of the 1994 class) were unplaced and actively continuing their search for articles.

C.4 1996-1997 ARTICLING PLACEMENT REPORT

C.4.1 The application form filed by students in third year law school who intend to enter Phase One of the Bar Admission Course in the summer of 1996 asks if the applicant has secured an articling position. The application filing deadline was November 15, 1995.

C.4.2 Of the 1,155 students who filed an application by November 15, 1995, 872 (75.5%) indicate they have secured an articling position, and 283 (24.5%) indicate that they continue to seek a position.

C.4.3 On January 15, 1996, the Placement Office wrote to the 283 students who indicated they continue to seek articles, providing details of the Society's articling placement program, and asking those who remained unplaced to register with the Placement Office. A copy of the Placement Director's letter and the Placement Office registration form are attached. (pages 10 - 17)

C.4.4 Although few responses to the Placement Director's letter have been received to date, some students have reported securing a placement since filing their application. As a result, the 1996-1997 articling placement date as at January 29, 1996 is as follows:

- 1) Of the 1,164 who have applied to enter the Bar Admission Course in 1996:
 - 892 (76.63%) have secured a permanent articling position; and,
 - 272 (23.37%) continue to seek articles to commence by September 1, 1996;
- 2) Students unplaced in January of their third year of law school in past years:
 - 1995 - 118 (16.8%)
 - 1994 - 217 (17.9%)
 - 1993 - 155 (13.5%)
 - 1992 - 101 (9.6%);
- 3) Students placed by December 31 of their articling year:
 - 1995 - 98.4%
 - 1994 - 99.0%
 - 1993 - 99.5%
 - 1992 - 99.7%.

C.4.5 In 1995, the Bar Admission Course application deadline was moved from January to the preceding November. Caution is advised in making assumptions based on comparisons between the 1996 results reported above (which are strongly influenced by the November deadline) and the results from prior years (which reflect the situation approximately two months later in January).

C.4.6 It is expected that results reported in March will provide a better point of comparison with previous years.

C.4.7 The Committee asked the Articling Subcommittee to pursue initiatives to alleviate the shortage of articling positions, and to consult with the Equity Committee on special challenges faced by visible minority students, including holders of a Certificate of Qualification issued by the National Committee on Accreditation, in procuring articling positions.

C.5 MANDATORY CONTINUING LEGAL EDUCATION

C.5.1 A draft final report was discussed by the Mandatory Continuing Legal Education Subcommittee on February 6, 1996. Once changes are made, the Subcommittee will circulate the report to the profession for comment. Once the comments are incorporated into the report it will be presented to the Legal Education Committee and Convocation.

C.5.2 The Subcommittee will next meet on Wednesday, February 28, at 5:30 p.m.

C.6 ARTICLING SUBCOMMITTEE

C.6.1 The Subcommittee met at 4:30 p.m. on January 31. In attendance were Jay Rudolph (Chair), Dean Neil Gold, Priti Sachdeva, Erin Kuzz and Gordon Andreiuk (by teleconference). Staff members attending were Marilyn Bode and Mimi Hart (first part of meeting only).

- C.6.2 The Subcommittee gave conditional approval to a further 89 applications from prospective articling principals for the 1995-96 articling term. To January, the applications to serve as principals for the 1995-96 articling term of approximately 1205 members have been considered. Of those, approximately 1204 applications have been approved. One application was denied.
- C.6.3 The Subcommittee approved a further 83 applications from prospective articling principals for the 1996-97 articling term. To January, applications to serve as principals for the 1996-97 articling term of approximately 663 members have been considered and approved.
- C.6.4 The Subcommittee gave special consideration to three applicants for the 1995-96 articling term and two applicants for the 1996-97 articling term. Four of the applicants have less than three years practice experience. All applications were approved.
- C.6.5 The Subcommittee considered three policy items. The first was the impact of the recent change to the Law Society's transfer requirements on current articling abridgment categories. (Please see Section A.1. of this Agenda.)
- C.6.6 The second policy item was a consideration of a change to the process for completion of the Evaluations required at the mid-point of the articling term for articling principals and students. One of the 1994-95 articling principals suggested the change. The articling principal believes it should be permissible for a student and a principal to complete the student and principal mid-term evaluations together. This is a significant change from the current requirement that the student and principal complete the mid-term evaluations individually. They may discuss them afterward if they wish, but it is not mandatory. The advantage of completing the forms together is reduced paperwork and time-savings for the principal, as the student can advise the principal of the extent and quality of the articling experience received. The disadvantages include pressure (subtle or otherwise) on the student to be generous in rating the quality of the experience received, and reduced frankness by the student in the ratings given. The Articling Director sought the advice of the Articling Subcommittee on this matter. Given the power imbalance in the articling student and principal relationship, the Subcommittee does not believe that an "option" of completing the form with the principal would be a genuine option for the student. The Articling Subcommittee decided that the Evaluations should continue to be completed separately by the student and principal. This does not prohibit a student and principal from discussing the Evaluation, but does not require or suggest such a discussion if the student is for some reason uncomfortable.
- C.6.7 The third policy item related to articling in Hull, Quebec. It has come to the attention of the Articling Director's office this year that approximately 10 students articling for the federal government are located in Hull, Quebec. The issue arose as a sole practitioner member who has his office in Hull considered applying to become an articling principal for the 1995-96 articling term. In discussions in the fall of 1995 with the Articling Director, he reminded her that some students employed by the federal government were articling in Hull, Quebec. The issue was not raised before as all documents submitted to the Bar Admission Course by the offices in Hull indicated Ottawa addresses and phone numbers. After some discussion of the issue, the Subcommittee decided that this did not currently present a problem, as the students were obtaining experience in federal or Ontario practice and procedure.

23rd February, 1996

- C.6.8 The Subcommittee considered the Report on Final Student Evaluations and Principal Mid-Term Evaluations for the 1993-94 and 1994-95 articling terms. The Subcommittee noted that the majority (75% or greater) of students are receiving a satisfactory, good or excellent experience in each of the 13 skills areas required for the articling experience.
- C.7 CONTINUING LEGAL EDUCATION REPORT ON COURSES
- C.7.1 The Continuing Legal Education Report, prepared by the Director of Continuing Legal Education, Brenda Duncan, is attached. (pages 18 - 20)

ALL OF WHICH is respectfully submitted

DATED February 23, 1996

P. Epstein
Chair

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

- Item A.-A.1.1 - Copy of Abridgment of Articles. (pages 1 - 3)
- Item A.-A.1.2 Copy of the new section 4 of Regulation 708 under the Law Society Act. (pages 4 - 5)
- Item C.-C.7.1 Copy of the Continuing Legal Education Report. (pages 6 - 8)

THE REPORT WAS ADOPTED

Professional Conduct Committee

Meeting of February 8, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of February, 1996 at three o'clock in the afternoon, the following members being present: N. Finkelstein (Chair), R. Armstrong (Vice-Chair), R. Aaron, L. Banack, E. Cronk, G. Gottlieb, J. Harvey, W.D. Millar, T. Stomp and S. Thom. The following staff were present: M. Devlin, S. Kerr, S. Traviss and J. Varro.

A.
POLICY

1. TAPE RECORDING OF CONVERSATIONS -
THE PROVISION OF COMMENTARY 4 TO
RULE 14 - DOES THIS NEED TO BE REVISED?

Paragraph 4 of the Commentary to Rule 14 reads as follows:

The lawyer should avoid sharp practice, and should not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of other lawyers not going to the merits or involving the sacrifice of the client's rights. The lawyer should not use a tape recorder or other device to record a conversation between the lawyer and a client, or another lawyer, even if lawful, without first informing the other person of the intention to do so.

This commentary provides that a lawyer cannot tape record conversations with his/her client or with another lawyer without the consent of the client or the lawyer. However, it does permit a lawyer to tape record a conversation with a third party who is not a client or a lawyer.

The tape recording of lawyers conversations with other lawyers and with clients is becoming more widespread today than in the past. Some benchers asked the Professional Conduct Committee to review this provision in Rule 14.

The Committee was of the opinion that paragraph 4 was in order and did not need to be revised.

The Committee asks Convocation to adopt this position.

C.
INFORMATION

1. IS THERE A NEED FOR A PROHIBITION
AGAINST SOLICITATION (PARAGRAPH 4
OF RULE 12) AND STEERING (PARAGRAPH 5
OF RULE 12) IN THE RULES OF PROFESSIONAL
CONDUCT? - REQUEST FOR ADVICE

The Committee discussed this subject briefly and decided to canvass other law societies across Canada as to their position on these issues. Also other professions in Ontario will be looked at before this matter is brought back to the Committee.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February, 1996

N. Finkelstein
Chair

THE REPORT WAS ADOPTED

Real Estate Issues Committee

Meeting of February 8, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The REAL ESTATE ISSUES COMMITTEE submits this report:

The Committee met on Thursday, the 8th of February, 1996 at 4:00 p.m., with the following members present:

Benchers: R. Aaron (Chair), R. Wilson (Vice-Chair), M. Adams, L. Banack, R. Cass, T. Cole, A. Feinstein, G. Gottlieb, D. Murphy, H. Puccini, B. Wright;

Non-Benchers: A. Direnfeld, S. Esbin, E. Franklin, A. Loeb, J. McKay, R. Rosenblatt, C. Rosenstein, A. Silverstein, G. Wilkki.

Also present: D. Godden.

A.
POLICY

A.1 POSSIBLE STRIKE BY ONTARIO PUBLIC SERVICE EMPLOYEES' UNION ("OPSEU")

A.1.1 The possibility of a strike by OPSEU raises a question about how any such strike may affect real estate transactions that are scheduled to close during the strike. For example, if Land Registry Offices are closed during a strike, lawyers will be unable to register the transfers and mortgages necessary to close purchase and mortgage transactions on behalf of their clients. Similarly, if Sheriffs' Offices are closed, lawyers will be unable to obtain certificates confirming whether there are writs of execution filed against vendors and mortgagors that would affect the land being purchased or mortgaged.

A.1.2 Your Committee received information that the Land Registry Offices would not be considered an essential service in the event of a strike. Although it is possible that management would try to keep the Land Registry Offices and/or the Sheriffs' Offices open during a strike, it is not likely that the usual volume of transactions could be handled in this manner.

A.1.3 It is anticipated that the Practice Advisory Service, the Lawyers' Professional Indemnity Company ("LPIC"), and members of this Committee will receive calls by lawyers asking for guidance in the event that the lawyers are not able to (or the lawyers anticipate that they may not be able to) close transactions on the closing dates set out in their clients' contracts. Of course, the Practice Advisory Service would confirm that the purpose of the guidance is to assist in identifying issues, but the guidance does not replace the lawyer's own discretion.

A.1.4 Although it is clear that a lawyer has a duty to act in a client's interest, the issues that affect a particular client will vary with the circumstances of the particular transaction. It will be a challenge for lawyers to resolve these issues in a manner that is satisfactory to each client if the Land Registry offices or the Sheriffs' offices are inoperative on the dates set for closing.

There may even be circumstances where the parties do not agree to extend the closing date, and the transaction becomes litigious instead of closing. Accordingly, it is in the public interest that the Land Registry and Sheriffs' offices continue to operate in the event of a strike by OPSEU.

A.1.5 Your Committee therefore recommends that the Secretary of the Law Society be requested to send a letter asking the Minister of Consumer and Commercial Relations, in the public interest, to keep the Land Registry offices and Sheriffs' offices open in the event of a strike by OPSEU.

A.2 MORTGAGE LOANS WITHOUT LEGAL ADVICE TO BORROWERS

A.2.1 Your Committee has previously identified its concerns that some institutional lenders offer mortgage loans to individuals under terms which suggest that a borrower or guarantor does not need legal advice and which may, in fact, discourage borrowers and guarantors from obtaining legal advice.

A.2.2 As one of the means of addressing these concerns, the Committee has proposed that the co-operation of The Law Foundation of Ontario be invited to assist in bringing the Law Society's concerns to the attention of those financial institutions. The proposal was set out as two recommendations in the Committee's report to Convocation dated October 16, 1995, and such recommendations were endorsed by Convocation on November 24, 1995.

A.2.3 The Chair attended a meeting of the Trustees of the Law Foundation on November 28, 1995, and presented the concerns of this committee and of Convocation.

A.2.4 The Law Foundation declined to take action on the concerns of Convocation but indicated that its Board would look favourably upon an application for a grant to fund research into the common concerns of the Law Society and the Law Foundation, as they impact the public interest. Your Committee is of the view that it is appropriate to investigate the possibility of such a grant.

A.2.5 Your Committee therefore requests that Convocation authorize the Committee to investigate the particulars of, and if appropriate, apply for a grant by the Law Foundation to fund the proposed research.

A.3 ELECTRONIC REGISTRATION OF TITLE DOCUMENTS

A.3.1 At the January 11, 1996 meeting of the Committee, representatives of the Ontario Ministry of Consumer and Commercial Relations ("MCCR") and Teranet Land Information Services Inc. ("Teranet") demonstrated the manner in which documents will be registered in the land registration system when the proposed facility for remote registration is implemented. Several concerns were identified regarding the proposals, including those referred to in the Committee's report to Convocation dated January 26, 1996, and in Alan Silverstein's *Toronto Star* column.

A.3.2 Mr. John McKay, one of the non-bencher members of the Committee, informed the Committee that the Canadian Bar Association - Ontario met with Mr. Norman Sterling, the Minister of Consumer and Commercial Relations, regarding electronic registration of title documents. At that meeting, the Minister indicated that the Ministry will give serious consideration to concerns that may be expressed about electronic registration, including concerns about

23rd February, 1996

the potential for abuse and the cost to the public (through taxes for the Consolidated Revenue Fund which funds the Land Titles Assurance Fund) to compensate those wrongfully deprived of their interests in land.

A.3.3 Your Committee is of the view that it is in the public interest to address the concerns about electronic registration of title documents.

A.3.4 Your Committee, therefore, proposes to:

- (a) accept the above-mentioned invitation by the Minister;
- (b) explore the issues surrounding remote registration, both within the Committee, and by way of dialogue with Teranet and MCCR and, if appropriate, LPIC; and
- (c) report to Convocation with information and recommendations in due course.

B.
ADMINISTRATION

NOTHING TO REPORT

C.
INFORMATION

NOTHING TO REPORT

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February 1996

R. Aaron
Chair

THE REPORT WAS ADOPTED

Reasons - Jairus Hamilton Maus

THE LAW SOCIETY OF UPPER CANADA
IN THE MATTER OF THE LAW SOCIETY ACT

JAIRUS HAMILTON MAUS
of the City of Cambridge
A BARRISTER AND SOLICITOR

Christina Budweth

For The Society

Jairus Hamilton Maus

On His Own Behalf

SEPTEMBER 28, 1995

REASONS OF CONVOCATION

Upon reviewing the report and recommendation of the discipline hearing panel in this matter, and upon hearing submissions from counsel for the Society, and upon hearing a letter sent to Convocation dated September 14, 1995 by the solicitor, Convocation adopted the report but not the panel's recommendation as to penalty. Convocation allowed the solicitor to resign, notwithstanding the discipline panel recommended a lesser penalty.

In this matter the following particulars of professional misconduct were found to have been established:

1. A breach of an order of Convocation that he be suspended from practise of law for failure to pay his annual fees.
2. A breach of an order of Convocation that he be suspended from practise for failure to pay his errors and omissions levy.
3. He operated his general account transaction through his mixed trust account and co-mingled general office funds in his trust account for the purpose of avoiding creditors, thus subjecting his clients' trust monies to risk of seizure.

The discipline committee recommended that the solicitor be suspended for a period of six months, the suspension to continue thereafter until the solicitor had provided satisfactory evidence to the senior counsel of discipline that he had entered into an appropriate counselling program to help him deal with his grief and losses.

In front of the discipline committee the solicitor requested permission to resign as he no longer wished to practise law.

Before the discipline panel the solicitor recounted a history which was highly tragic that affected his personal life. The details were put before the discipline committee.

The discipline committee indicated that the acts of professional misconduct admitted by the solicitor were serious ones but they did not warrant disbarment or a disciplinary resignation. They were not prepared to go along with the solicitor's request that they recommend to Convocation a resignation. The panel's view was that the appropriate penalty was a suspension for a period of six months, to continue thereafter until the solicitor had provided satisfactory evidence to the senior counsel of discipline that he had entered into an appropriate counselling program to help him deal with his grief and losses.

The committee was of the view that recommending the solicitor's resignation in all the circumstances of that case would not be of assistance to the solicitor and perhaps more importantly, would introduce a distortion of the Law Society's precedents for such disposition.

At Convocation on September 28, 1995, a letter dated September 14, 1995 was read. Once again, in his rather moving letter, the solicitor stated, inter alia, "my decision to request the right to resign was not just to protect the profession, clients and the Law Society, it was also a matter of my own self respect. To this day I believe that the finality of resignation would be the best solution for myself and I do not envisage any circumstances in which I would seek to return into practise...."

Convocation was advised that there was no impediment to Convocation granting Mr. Maus permission to resign in the form of any outstanding trust problems or anything of that nature.

23rd February, 1996

Convocation considered the following:

1. The solicitor wanted permission to resign; he no longer wished to practise law.
2. He has thought long and hard about it.
3. He and the Society's counsel had hours of discussion before the matter was put forward as a joint submission to Convocation.
4. He has very difficult personal circumstances.

Convocation accordingly granted the solicitor permission to resign.

GERALD A. SWAYE, Q.C.

THE REASONS WERE ADOPTED

Specialist Certification Board

Meeting of February 8, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday the 8th of February 1996 at nine o'clock in the morning, the following members being present: R. Manes (Chair), D. Murphy (Vice-Chair), L. Banack, J. Callwood, D. Millar, M. Pilkington. C. Giffin and D. Moreira of the Law Society, were also present.

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

The Workers' Compensation Law Specialty Committee met on Thursday, the 18th day of January, 1996 at five o'clock in the afternoon.

The Criminal Law Specialty Committee met on Friday, the 26th day of January, 1996 at one o'clock in the afternoon.

A.
POLICY

A.1. BASIC CRITERIA FOR THE DEVELOPMENT OF NEW SPECIALTY AREAS

- A.1.1. Your Board reviewed the standard letter and documentation on basic criteria that will be sent in response to legal groups interested in the possibility of certification for their area of specialty. The Board will not become involved in the research process of that particular specialty area until the group has concrete information to present to the Board. However, the Board will be kept informed on any groups who have expressed interest and their subsequent progress.

A.2. REVISED AGENDA FORMAT

A.2.1. In response to the move toward a Policy Governance Model, Board meeting agendas will be structured to focus on priority items only. Other matters, administrative in nature, and being carried out based on existing policies and procedures, will be presented on the Agenda as "Information Items" and are generally not for discussion. If a Board member wishes to place in Information Item on the meeting agenda for discussion, they must contact the Chair of the Board two days prior to Meeting Day.

A.3 APPROVAL OF APPLICATIONS/REDUCTION OF PAPER

A.3.1. In order to reduce the voluminous amount of paperwork provided at Board meetings, as well as staff time and program expenditures, a new procedure has been introduced for the handling of applications. Applications will fall into one of three different categories and the paperwork provided for each category will differ as follows:

A.3.2. (i) New/Recertification Applications -- Recommended For Approval. Recommendations of Specialty Committee (one sheet) will be provided for each applicant. Original applications will be available at or prior to the meeting. Members are encouraged to contact the Administrator prior to the meeting with any concerns on a specific applicant to determine if those concerns require discussion at the meeting. These applications have been thoroughly reviewed and cleared by the Program Administrator, the Professional Standards Department, and the appropriate Specialty Committee based on the current standards and requirements of the program.

A.3.3. (ii) Applications Requiring Board Assessment. All or part of application will be provided (at discretion of Administrator). These applications raise questions on policy issues, professional standards concerns, or other matters of concern, requiring discussion and assessment by the Board.

A.3.4. (iii) Rejected Applications -- Not Recommended For Approval. Complete application provided. Because of the sensitive nature of rejected applications, the Board will review the complete application before a final recommendation for rejection is approved.

B.
ADMINISTRATION

B.1. FAMILY LAW SPECIALTY COMMITTEE MEMBERSHIP

B.1.1. Your Board approved the appointment of two new members, Judith Shea (of Thunder Bay) and Terry Hainsworth (of London), to sit on the Family Law Specialty Committee.

B.2. REPORT TO THE GOVERNANCE RESTRUCTURING COMMITTEE

B.2.1. Your Board reviewed the report of activities produced by the Chair and the Administrator on its behalf and submitted to the Governance restructuring Committee on January 24, 1996.

C.
INFORMATION

C.1. CERTIFICATION OF SPECIALISTS

C.1.1. Your Board is pleased to report the certification of the following lawyers as Criminal Law Specialists:

James A. Tory Colvin (of London)
Rick Libman (of Toronto)

C.2. RECERTIFICATION OF SPECIALISTS

C.2.1. Your Board is pleased to report the recertification for an additional five years of the following lawyers as Civil Litigation Specialists:

Larry Banack (of Toronto)
Kenneth Cancellara (of Toronto)
Bruce Haines (of Toronto)
John Read (of Ottawa)

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

Michael Caroline (of Toronto)
Robert Meagher (of Ottawa)

C.2.3. Your Board is pleased to report the recertification for an additional five years of the following lawyers as Family Law Specialists:

Allan Cooper (of Toronto)
A. Burke Doran (of Toronto)

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February, 1996

R. Manes
Chair

THE REPORT WAS ADOPTED

NOTICE OF MOTION

Mr. Armstrong gave notice of a motion which he would be bringing before Convocation in March.

MOTION

Moved by: Robert Armstrong

Seconded by: Mary Eberts

23rd February, 1996

- (1) The Law Society of Upper Canada shares the concerns expressed by the senior judges of the Ontario courts and fully endorses the position taken in their letter to the Attorney General;
- (2) The Law Society of Upper Canada regards the administration of justice in the province as a partnership among the Bench, the Bar and the Ministry of the Attorney General;
- (3) The Law Society of Upper Canada, as the governing body of the legal profession, seeks to consult with the Attorney General and his officials together with the senior judges of the courts and the various organizations of the Bar in the province to ensure that any changes to the judicial system preserve and improve the administration of justice and access to justice for the citizens of Ontario;
- (4) Convocation hereby requests the Treasurer to bring to the attention of the Attorney General the concerns of the Law Society and its desire and willingness to consult in respect of these matters on an urgent basis.

It was moved by Mr. Topp, seconded by Ms. Ross that Convocation dispense with the Notice requirement.

Carried

It was moved by Mr. Murphy, seconded by Mr. Aaron that the motion be amended in paragraph 3, after the words "judicial system" by adding the words "including any proposed courthouse closings" so that the paragraph would then read:

"The Law Society of Upper Canada, as the governing body of the legal profession, seeks to consult with the Attorney General and his officials together with the senior judges of the courts and the various organizations of the Bar in the province to ensure that any changes to the judicial system including any proposed courthouse closings preserve and improve the administration of justice and access to justice for the citizens of Ontario."

It was moved by Mr. O'Brien, seconded by Mr. Wilson that the motion be further amended by changing the word "partnership" in paragraph 2 to the words "common interest".

Both amendments were accepted by the mover and seconder.

The Armstrong/Eberts motion carried as amended.

MOTIONS

Rule 50 Amendments

The motion regarding amendments to Rule 50 which related to student members was stood down.

Rule 50 Amendment re: Professional Liability Levies

It was moved by Mr. Aaron, seconded by Mr. Ruby that consideration of paragraph (k) be deferred until April Convocation in order to deal with the policy issue of Ontario called - Manitoba resident lawyers practising real estate in Ontario.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	For
Angeles	Abstain
Armstrong	For
Arnup	Against
Bobesich	For
Carpenter-Gunn	Against
Cole	For
Copeland	Against
Crowe	Against
Curtis	Against
Eberts	For
Epstein	Against
Feinstein	Against
MacKenzie	For
Manes	For
Millar	For
Murphy	For
Murray	Against
O'Brien	For
O'Connor	Abstain
Puccini	For
Ross	For
Ruby	For
Sachs	Against
Scott	Against
Sealy	Against
Stomp	Against
Swaye	For
Thom	Abstain
Wright	Against

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IN CAMERA

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IN PUBLIC

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Motions

Rule 50 Amendment - Annual Fees

AMENDMENT OF RULES MADE UNDER SUBSECTION 62(1) OF THE *LAW SOCIETY ACT*

(ANNUAL FEES)

WHEREAS the change of the Society's financial year makes it necessary,

- to amend that part of Rule 50 which prescribes annual fees;
- to provide for an "annual" fee for the six-month period July 1 to December 31, 1996; and
- to change the date on which student members called to the bar at the special call ceremonies in February each year are required to start paying the annual fee,

THAT CONVOCATION AMEND THE RULES MADE UNDER SUBSECTION 62(1) OF THE *LAW SOCIETY ACT* BY REVOKING THAT PART OF RULE 50 HEADED "ANNUAL" AND SUBSTITUTING THE TEXT SET OUT ON THE FOLLOWING TWO PAGES:

TEXT OF PROPOSED AMENDMENT

ANNUAL

Notwithstanding the ordinary meaning of the word "annual", for the eighteen-month period July 1, 1995 to December 31, 1996, two annual fees shall be payable, one for the twelve-month period July 1, 1995 to June 30, 1996 and one for the six-month period July 1 to December 31, 1996.

- (1) For the twelve-month period July 1, 1995 to June 30, 1996, annual fees are payable as follows:
 - (a) Unless otherwise exempted every member of the Society shall pay an annual fee of \$1,835, which sum includes a Lawyers Fund for Client Compensation levy, a Legal Aid levy and a County Library levy.
 - (b) The annual fee became due and payable on July 1, 1995.

- (c) Subject to paragraph (e), the annual fee payable by a member admitted, readmitted or restored to membership subsequent to July 1, 1995, shall be reduced *pro rata*, the fee to be calculated on the basis of the number of whole calendar months remaining before June 30, 1996.
 - (d) Subject to paragraph (e), if a member is admitted, readmitted or restored to membership on a date subsequent to July 1, 1995, the *pro rata* annual fee is due and payable on the date on which the member is admitted or readmitted or on the date when the member's membership is restored, as the case may be.
 - (e) The annual fee for the period ending June 30, 1996, payable by a student member who is called to the bar at a meeting of Convocation held between January 1 and March 31, 1996, shall be \$459 and shall be due and payable on April 1, 1996.
- (2) For the six-month period July 1 to December 31, 1996, annual fees are payable as follows:
- (a) Unless otherwise exempted every member of the Society shall pay a fee, to include a Lawyers Fund for Client Compensation levy, a Legal Aid levy and a County Library levy for the period July 1 to December 31, 1996, in an amount to be determined by Convocation.
 - (b) The annual fee shall be due and payable on July 1, 1996.
 - (c) The annual fee payable by a member admitted, readmitted or restored to membership subsequent to July 1, 1996, shall be reduced *pro rata*, the fee to be calculated on the basis of the number of whole calendar months remaining before December 31, 1996.
 - (d) If a member is admitted, readmitted or restored to membership on a date subsequent to July 1, 1996, the *pro rata* annual fee is due and payable on the date on which the member is admitted or readmitted or on the date when the member's membership is restored, as the case may be.
- (3) For the year commencing January 1, 1997, and all subsequent years, annual fees are payable as follows:
- (a) Unless otherwise exempted every member of the Society shall pay an annual fee, to include a Lawyers Fund for Client Compensation levy, a Legal Aid levy and a County Library levy for each financial year of the Society in an amount to be determined by Convocation.
 - (b) The annual fee shall be due and payable on January 1 in each financial year.
 - (c) Subject to paragraph (e), the annual fee payable by a member admitted, readmitted or restored to membership subsequent to January 1 in any year shall be reduced *pro rata*, the fee to be calculated on the basis of the number of whole calendar months remaining before the end of the financial year.
 - (d) Subject to paragraph (e), if a member is admitted, readmitted or restored to membership on a date subsequent to January 1, the *pro rata* annual fee is due and payable on the date on which the member is admitted or readmitted or on the date when the member's membership is restored, as the case may be.

- (e) The annual fee payable in the year of admission to membership by a student member who is called to the bar at a meeting of Convocation held between January 1 and March 31, shall be,
 - (i) due and payable on April 1 of that year; and
 - (ii) equal in amount to the annual fee payable by a member admitted on April 1 of that year.

(End of proposed amendment.)

APPENDIX TO NOTICE OF MOTION

EXISTING TEXT

FEEES

50. The fees and levies that are payable to the Society shall be paid in the circumstances and at the times specified as follows, and the amount of a fee or levy shall be the sum of the amount specified and any tax that is required by law to be paid by the person receiving the service and collected by the Society:

.....

ANNUAL

- (i) Unless otherwise exempted every member of the Society shall pay an annual fee, to include a Lawyers Fund for Client Compensation levy, a Legal Aid levy and a County Library levy for each financial year of the Society in an amount to be determined by Convocation.
- (ii) The annual fee shall be due and payable on July 1 in each financial year.
- (iii) The annual fee payable by a member admitted, readmitted or restored to membership subsequent to July 1 in any year shall be reduced *pro rata*, the fee to be calculated on the basis of the number of whole calendar months remaining before the end of the financial year.
- (iv) If a member is admitted, readmitted or restored to membership on a date subsequent to July 1, the *pro rata* annual fee is due and payable on the date on which the member is admitted or readmitted or on the date when the member's membership is restored, as the case may be.
- (v) Student members who are admitted during the financial year in which they complete the three-month teaching term (Phase III) of the Bar Admission Course are not required to pay the annual fee for the financial year in which they are called to the bar and admitted as solicitors.

It was moved by Mr. Murray, seconded by Mr. Feinstein that the Rule 50 amendment regarding annual fees be adopted.

Carried

Rule 50 Amendment - Professional Liability Fees

AMENDMENT OF RULES MADE UNDER SUBSECTION 62(1) OF THE *LAW SOCIETY ACT*
(PROFESSIONAL LIABILITY LEVIES)

WHEREAS, in October 1995, Convocation approved the arrangements proposed in the report of the Lawyers' Professional Indemnity Company concerning the Society's 1996 insurance program, thereby making it necessary to amend that part of Rule 50 which prescribes the levies to be paid for indemnity for professional liability,

THAT CONVOCATION AMEND THE RULES MADE UNDER SUBSECTION 62(1) OF THE *LAW SOCIETY ACT* BY REVOKING THAT PART OF RULE 50 HEADED "INDEMNITY FOR PROFESSIONAL LIABILITY" AND SUBSTITUTING THE TEXT SET OUT ON THE FOLLOWING TWO PAGES:

TEXT OF PROPOSED AMENDMENT

PROFESSIONAL LIABILITY LEVIES

For the purposes of paragraphs (a) through (k) below,

"the Society's insurance plan" means the Society's professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for its members;

"to engage in the practice of law" means to perform professional services for others in the capacity of a barrister or solicitor and includes the giving of legal advice.

- (a) Unless otherwise exempted, every member of the Society who is eligible for coverage under the Society's insurance plan and who engages in the practice of law during the course of any year shall pay insurance premium levies for that year as required by this rule.
- (b) The insurance premium levies shall consist of a base levy, a vicarious liability surcharge levy and such other levies as may be set by Convocation or be required by the Society's insurance plan.
- (c) The insurance premium levies shall be used for the Society's insurance fund, or to pay the required insurance premiums, reserves, group deductibles, adjusting costs, counsel and legal fees, administration costs and other expenses reasonably incurred in connection with the Society's insurance plan.
- (d) If at the end of any year the insurance fund is not entirely used up, the surplus remaining shall be carried forward into the next year.
- (e) The base insurance premium levy and any vicarious liability surcharge levy are due and payable on January 1 every year.

- (f) Where the Society arranges or permits a schedule for the payment of levies by instalments or otherwise and a required payment is not made by a scheduled date, failure to pay the levy will be deemed to have occurred on January 1.
- (g) Where a member who has paid one or both of the levies referred to in paragraph (e) subsequently, during the course of the year for which the levy or levies were payable, dies, retires, ceases to be eligible for coverage, or is exempted by the Society from the requirement to pay one or both of the levies, the unused portion of the base insurance premium levy and any vicarious liability surcharge levy shall be refunded on a pro rata basis, subject to a two month minimum.
- (h) Such other levies as may be set by Convocation or required by the Society's insurance plan are due and payable on the dates specified by Convocation or the Society's insurance plan.

Eligibility for coverage

- (i) Every member of the Society other than an honorary member or a student member is eligible for coverage under the Society's insurance plan provided that his or her rights and privileges as a member are not suspended.
- (j) A member who is eligible for coverage under the Society's insurance plan but who is not required by this rule to pay insurance premium levies, may apply to the Society for coverage and, if granted coverage, shall pay the required levies in accordance with this rule.

Exemption from payment of levies

- (k) The following are eligible to apply for exemption from payment of insurance premium levies:
 - (i) Any member who, during the course of the year for which the levy is payable, will not engage in the practice of law in Ontario.
 - (ii) Any member who, during the course of the year for which the levy is payable,
 - (A) will be resident in a Canadian jurisdiction other than Ontario,
 - (B) will engage in the practice of law in Ontario on an occasional basis only (where practice "on an occasional basis" means, in the course of the year, not more than ten real estate transactions or not more than eighty hours of work where such work is usually billed on an hourly basis), and
 - (C) demonstrates proof of coverage for the member's practice in Ontario under the mandatory professional liability insurance program of another Canadian jurisdiction, such coverage to be at least equivalent to that required under the Society's insurance plan.
 - (iii) Any member who, during the course of the year for which the levy is payable, will be employed full-time as,

- (A) counsel or solicitor to the Government of Ontario or of Canada or to any corporation other than a law corporation,
- (B) a Crown Attorney,
- (C) a city solicitor, or
- (D) a law teacher,

and who will not, apart from such employment, engage in the practice of law in Ontario.

(End of proposed amendment.)

APPENDIX TO NOTICE OF MOTION

EXISTING TEXT

FEEES

50. The fees and levies that are payable to the Society shall be paid in the circumstances and at the times specified as follows, and the amount of a fee or levy shall be the sum of the amount specified and any tax that is required by law to be paid by the person receiving the service and collected by the Society:

.....

INDEMNITY FOR PROFESSIONAL LIABILITY

- (a) Levies for indemnity for professional liability to be used for an insurance fund to cover insurance premiums, reserves, group deductibles, adjusting costs, counsel and legal fees, administration costs and other expenses reasonably incurred in connection with indemnity for professional liability.
- (b) The levies are payable by every member who engages in active practice in any year.
- (c) The levies are to be paid to the Society at such time and in such amount in any year as Convocation may from time to time determine.
- (d) The levies payable shall be:
 - (i) A general levy as may be set by Convocation or required by the Society's policy of professional liability insurance, payable as follows:
 - (A) By any member who commences practice in January, February or March of any year except those called to the Bar in February of any year
 100% of the prescribed levy;
 - (B) By any member who is called to the Bar and commences practice in February of any year
 75% of the prescribed levy;
 - (C) By any member who commences practice in April, May or June of any year
 75% of the prescribed levy;

- (D) By any member who commences practice in July, August or September of any year
 50% of the prescribed levy;
- (E) By any member who commences practice in October, November or December of any year
 25% of the prescribed levy.
- (ii) Such other levies in the form of surcharges or other payments as may be set by Convocation or required by the Society's policy of professional liability insurance, payable at the times and in the manner determined by Convocation or specified in the policy.
- (e) The following are eligible to apply for exemption from payment of the levies:
 - (i) full-time counsel or solicitor to the Government of Ontario or of Canada or to any corporation, (except a law corporation), a Crown Attorney, City Solicitor or law teacher, unless in any year the member engages in practice apart from such employment; and
 - (ii) any member (except a member who is a shareholder of a law corporation) not engaging in practice during the year in respect of which the levy is prescribed.
- (f) If at the end of the year the insurance fund is not entirely used up the surplus remaining shall be carried forward into the next year.

The Rule 50 amendment regarding Professional Liability Fees with the exception of paragraph (k) was voted on and adopted.

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

Finance and Administration Committee

Meeting of February 8, 1996

Mr. Murray presented the Budget for the year ended December 31, 1996 for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of February, 1996 at 10:30 a.m., the following Benchers being present: Ross Murray (Chair), Kim Carpenter-Gunn, Thomas Cole, Marshall Crowe, Elvio DelZotto, Neil Finkelstein, Jane Harvey, Vern Krishna, Ronald Manes, Barry Pepper, Heather Ross and Bradley Wright. Staff in attendance were John Saso, Meg Angevine, David Carey and Wendy Tysall.

A.
POLICY

A.1 Audit Committee

The Committee recommends that there be an Audit Sub-Committee of the Finance and Administration Committee to fulfil its monitoring function. The Committee further requests that the Governance Committee consider this recommendation in formulating its committee structure.

A.2 Five Year Plan

The Committee recommends that the Law Society develop a long term planning program (e.g. 5 years) in addition to the one year planning program currently in place.

B.
ADMINISTRATION

1. DRAFT BUDGET FOR THE YEAR ENDED DECEMBER 31, 1996

The draft budget (included as a separate bound document) and covering memorandum from John Saso (attached as Appendix I to this report) are presented for Convocation's review.

The Committee recommends that the draft budget be approved.

The Committee further recommends that for 1997 and subsequent years the following procedure be adopted:

1. Organizations receiving or seeking funding from the Law Society be required to submit a detailed proposal in support of their request for funding each year to the Finance and Administration Committee, or its designate, for consideration.
2. Funding will not be provided to any organization except with the approval of the Finance and Administration Committee.

The Committee further recommends that organizations which are currently receiving funding from the Law Society be advised forthwith of this new procedure.

Note: Amendment, see page 356

2. SUSPENSION OF MEMBERS - N.S.F. CHEQUE

There are members who paid their Annual Fees or their Errors and Omissions Insurance levies with cheques which were subsequently dishonoured by the bank.

The Committee is asked to recommend that the rights and privileges of these members be suspended by Convocation on February 23, 1996 if the fees or levies remain unpaid as of that date.

Note: Motion, see page 365

3. SALE OF MEMORABILIA

The Committee approved a one time expenditure of up to \$10,000 to provide funding to develop and institute a program for the sale of Law Society memorabilia as a revenue enhancement initiative.

C.
INFORMATION

1. PREPARATION OF FINANCIAL STATEMENTS FOR THE YEAR END
DECEMBER 31, 1995

Preparation of the financial statements for the year ended December 31, 1995 is on target with the timetable presented to the Committee last month.

The auditors will begin their audit on February 26, 1996.

Noted

2. LEGAL MEETINGS AND ENTERTAINMENT

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

- | | |
|-------------------|--|
| February 14, 1996 | Advocates' Society
Barristers' Lounge and
Convocation Hall |
| February 15, 1996 | Lawyers' Club
Barristers' Lounge and
Convocation Hall |
| February 21, 1996 | Advocates' Society
Barristers' Lounge and
Convocation Hall |
| February 22, 1996 | Lawyers' Club
Barristers' Lounge and
Convocation Hall |
| February 23, 1996 | Wilson Moot
Barristers' Lounge |
| February 28, 1996 | Advocates' Society
Convocation Hall |
| March 2, 1996 | Gale Moot Club
Barristers' Lounge and
Convocation Hall |

Noted

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February 1996

R. Murray
Chair

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

- Item B.-1. - Copy of Memorandum from Mr. John Saso, to the Treasurer and Members of Convocation dated February 12, 1996 re: Draft Budget - Calendar 1996. (Appendix I)
- Item B.-1. - Copy of draft budget in Convocation file.

It was moved by Mr. Murray, seconded by Mr. Feinstein that the budget be approved.

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that approval of the budget be deferred until the March Convocation to allow the staff to prepare a contingent plan should Bencher compensation be approved.

Lost

ROLL-CALL VOTE

Aaron	For
Adams	Against
Angeles	Against
Armstrong	For
Arnup	Against
Backhouse	Against
Bobesich	Abstain
Carey	Against
Carpenter-Gunn	Against
Cole	Against
Copeland	Against
Cronk	Against
Crowe	Against
Curtis	Against
Eberts	Against
Epstein	Against
Feinstein	Against
Gottlieb	For
Goudge	Against
Lamek	Against
Legge	Against
MacKenzie	Against
Manes	Against
Marrocco	Against
Millar	Against
Murphy	Against
Murray	Against
O'Brien	Against
O'Connor	Against
Puccini	Against
Ross	Against
Ruby	Against
Sachs	Against
Scott	Against
Sealy	Against
Stomp	Against
Swaye	Against
Thom	Against
Wright	Against

It was moved by Ms. Curtis, seconded by Ms. Sealy that the Dial-a-Law program continue to be funded on its historical basis and not be put on a "pay for services" basis.

Carried

It was moved by Mr. Thom, seconded by Mr. Gottlieb that the decision regarding the funding of the Law Society Gazette be deferred and that funding continue until that decision is made.

Lost

The budget as amended was adopted.

Notice of Motion - May Convocation

Moved by: G. Bobesich

Seconded by: G. Gottlieb

THAT the Dial-a-Law program be terminated.

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

The Treasurer and Benchers had as their guest for luncheon, Daniel Whitehead, a Harold J. Fox scholar.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Adams, Angeles, Armstrong, Arnup, Backhouse, Carey, Carpenter-Gunn, R. Cass, Copeland, Cronk, Crowe, Curtis, Eberts, Epstein, Feinstein, Gottlieb, Goudge, Lamont, Lawrence, Legge, MacKenzie, Manes, Marrocco, Millar, Murphy, Murray, O'Brien, O'Connor, Pepper, Puccini, Ross, Ruby, Sachs, Scott, Sealy, Stomp, Swaye, Thom, Wilson and Wright.

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IN PUBLIC

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

Admissions and Membership Committee

Meeting of February 23, 1996

Kelly Irene Mulcair
Matthew-Todd Ordower
Heather Joy Ritchie
Myer Rosen
Levi Sankar
Jacqueline Rose Solnik
Ian Christopher Whan Tong

Approved

B.3.3. Transfer from another Province - Section 4

B.3.4. The following candidates having completed successfully the Transfer Examination, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, February 23rd, 1996:

Barbara Ethelwyn Foster	Province of Saskatchewan
Said Mohammedally	Province of Alberta
Michael Alan Smith	Province of Alberta
Jay Lawton Spare	Province of British Columbia

Approved

B.4. MEMBERSHIP UNDER RULE 50

B.4.1. (a) Retired Members

B.4.2. 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:

Sidney Arthur Baldwin	Hamilton-Wentworth
Philip Wordsworth Benson	Toronto
James Henry Boland	North York
Leonard Bostrom	Toronto
Ronald Yacht Weir Campbell	Toronto
Gordon William Edward Conder	Simcoe County
Kenneth James Cadman Dean	Toronto
Lionel Edward Goulet	Toronto
Murray Greenbloom	Toronto
William Percival Heath	Lambton County
James Franklin Hutchinson	Oxford County
Dale John Miller	Durham Region
Hugh Springfield Otter Morris	Toronto
Peter Bruce Stripp	Toronto
Frank Edward Swinnen	Middlesex County
John Malcolm Wing	Lambton County

Approved

B.4.3. b) Incapacitated Members

B.4.4. The following members are incapacitated and unable to practise law and have requested permission to continue their memberships in the Society without payment of annual fees:

Stanley Mircheff	Toronto
Daniel Joseph Russell	Ottawa

Approved

B.5. RESIGNATION - REGULATION 12

B.5.1. The following members have applied for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. These members have requested that they be relieved of publication in the Ontario Reports:

Joan Ann Cunnison of Niagara Region, Ontario, was called to the Bar on April 10, 1981. She declares that she has not practised law since August 1994. 15 closed files from her former association with Robins, Cunnison remain in her possession (clients were notified). All trust funds have been accounted for. The 1995/96 annual fee is outstanding. The annual filings are up to date.

Peter Edwin Falk of Winnipeg, Manitoba, was called to the Bar on June 24, 1994. He declares that he has practised Ontario law on an occasional basis; and, ceased practising Ontario law January 8, 1996. He states that he has not been responsible for any trust accounts in Ontario; and, that all client matters have been dealt with to the clients' satisfaction. The annual filings are up to date.

Jeffrey Wayne Hamilton of New York, USA, was called to the Bar on February 9, 1993. He is currently suspended, for non-payment of the 1995/96 annual fees. He declares that he has not practised in Ontario since 1993. The annual filings are up to date.

Patricia Lynn Howard of Vancouver, BC, was called to the Bar on June 23, 1989. She declares that she ceased practising law in Ontario in June of 1992. The second instalment of the annual fee is outstanding. The annual filings are up to date.

Patwinderjit Kaur Ludu of Surrey, BC, was called to the Bar on February 8, 1994. She states that she was employed as a staff lawyer with a legal clinic until May 1995. She declares that she was not responsible for any trust accounts or clients' property. The annual fee is outstanding. The annual filings are up to date.

Tamara Ann Mawhinney of New York, USA, was called to the Bar on February 5, 1993. She declares that she has not practised law with respect to Ontario, at any time. The annual filings are up to date.
Robert Paul Meleg of Essex County, Ontario, was called to the Bar on March 29, 1977. He states that he has not practised Ontario law since 1981. The second instalment of the annual fee is outstanding. The annual filings are up to date.

Keith John Phillips of Duncan, BC, was called to the Bar on March 31, 1989. He is currently suspended for non-payment of the 1995/96 annual fees. He states that he has not practised law with respect to Ontario since August of 1994. The annual filings are up to date.

Nadine Yvonne Powell of Toronto, Ontario, was called to the Bar on February 16, 1995. She declares that she has never been in private practice in Ontario. The 1995/96 annual fee is outstanding. The annual filings are up to date.

Kathryn Ann Raymond of Dartmouth, Nova Scotia, was called to the Bar on April 9, 1987. She states that she has not practised in Ontario since 1989. She states that she has not been responsible for client trusts or property while in Ontario. The annual fee is outstanding. The annual filings are up to date.

Robert Gerling Richards of Regina, Saskatchewan, was called to the Bar on April 13, 1983. He is currently suspended for non-payment of the 1995/96 annual fee. He declares that he has not engaged in practice in Ontario since 1984. The annual filings are up to date.

Approved

C.
INFORMATION

C.1. CHANGE OF NAME

C.1.1.	<u>From</u>	<u>To</u>
	Cathryn Antoniette <u>Hammond</u>	Cathryn Antoniette <u>Hammond-Grant</u> (Marriage Certificate)
	<u>Yun Chung John Lee</u>	<u>John Yun Chung Lee</u> (Driver's Licence)
	Christine Anna <u>Philp</u>	Christine Anna <u>Zablocki</u> (Change of Name Certificate)
	Julia Shi-Eun <u>Shin</u>	Julia Shi-Eun <u>Shin Doi</u> (Change of Name Certificate)
	Donna Nancy <u>Zelnicker</u>	Donna Nancy <u>Hart</u> (Marriage Certificate)

Noted

C.2. STUDENTS

C.2.1.	<u>From</u>	<u>To</u>
	Sivan <u>Avrahami</u>	Sivan <u>Fox</u> (Change of Name Certificate)
	Anna Malgorzata <u>Godek</u>	Anna Malgorzata <u>Godek Makarczyk</u> (Marriage Certificate)

23rd February, 1996

Peter Alexander <u>Kalins</u>	Peter Alexander <u>Marshall Kalins</u> (Change of Name Certificate)
Sheryl Elizabeth <u>Lachine</u>	Sheryl Elizabeth <u>McGeen</u> (Marriage Certificate)
Margaret Rose Manktelow	Margaret Rose <u>Elliott</u> Manktelow
<u>Ludmila</u> Pekerman	<u>Mila</u> Pekerman (Change of Name Certificate)
Kathrine <u>Damotta</u> Ponte	Katherine <u>Da Motta</u> Ponte
Simona Tagliavini	Simona Tagliavini <u>Jellinek</u> (Passport)

Approved

C.3. ROLLS AND RECORDS

C.3.1. (a) Deaths

The following members have died:

Harry Fitzgerald Kimber Toronto, Ontario	Called 17/06/43 Died 03/09/94
John Munroe Harris Simcoe County, Ontario	Called 20/11/30 Died 03/09/95
Randall Derrick Emberson Brantford, Ontario	Called 26/03/90 Died 18/11/95
Wolf-Dietrich Lessman Toronto, Ontario	Called 25/06/59 Died 24/11/95
Rickson Andrew Outhet Mississauga, Ontario	Called 18/09/41 Died 27/11/95
Mervin M Katzman Toronto, Ontario	Called 12/04/62 Died 15/12/95
Ronald Joseph McGurk Ottawa, Ontario	Called 25/03/66 Died 30/12/95
James Thompson Garrow Toronto, Ontario	Called 19/06/30 Died 10/01/96
John Baskerville Conlin Toronto, Ontario	Called 29/06/49 Died 24/01/96

Noted

C.3.2. (b) Disbarments

The following members have been disbarred and their names removed from the rolls and records of the Society:

Lorenzo Antonio DeFranco Nepean, Ontario	Called March 21, 1975 Disbarred - Convocation January 25, 1996
Lee Edward Fingold Thornhill, Ontario	Called March 29, 1977 Disbarred - Convocation January 25, 1996
Irene Stich Toronto, Ontario	Called March 29, 1977 Disbarred - Convocation January 25, 1996

Noted

C.3.3. (c) Memberships in Abeyance

Upon their appointments to the offices shown below, the memberships of the following members have been placed in abeyance under Section 31 of the Law Society Act:

Donald Ross Cameron Toronto, Ontario	Called April 19, 1963 Appointed to Ontario Court of Justice (General Division) December 12, 1995
Marc Rosenberg Toronto, Ontario	Called April 9, 1976 Appointed to Court of Appeal for Ontario December 13, 1995
Joseph William Quinn St. Catharines, Ontario	Called March 24, 1972 Appointed to Ontario Court of Justice (General Division) December 20, 1995
Randolph Joseph David Mazza Hamilton, Ontario	Called March 22, 1974 Appointed to Ontario Court of Justice (General Division) December 23, 1995
Joan Lynn Lax Toronto, Ontario	Called April 14, 1978 Appointed to Ontario Court of Justice (General Division) January 1, 1996

Noted

C.5. RESULTS OF THE TRANSFER EXAMINATION

C.5.1. The following candidates successfully completed the January 1996 Transfer Examination:

C.5.2.	Barry Winston Bussey	Province of Newfoundland
	Barbara Ethelwyn Foster	Province of Saskatchewan
	Gordon Levine	Province of Quebec
	Said Mohammedally	Province of Alberta
	Michael Alan Smith	Province of Alberta
	Jay Lawton Spare	Province of British Columbia

Noted

23rd February, 1996

C.6. REINSTATEMENT FOLLOWING SUSPENSION

C.6.1. The following members have been reinstated following successful completion of requalification examinations and having either made payment in full for all arrears of fees or the appropriate payment arrangements with the office of the Director Finance:

C.6.2.	<u>Name</u>	<u>Date of Reinstatement</u>
	Laurie Gayle Ballantyne-Gaska	January 16, 1996
	Tibor Istvan Bankuti	February 6, 1996
	John William McIsaac	January 23, 1996

Noted

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February, 1996

P. Epstein
Chair

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

Carried

THE REPORT WAS ADOPTED

Libraries and Reporting Committee

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE LIBRARIES AND REPORTING COMMITTEE begs leave to report:

1. BUDGET REVIEW

Since November 1995 the Libraries and Reporting Committee has been reviewing the draft budgets submitted by the County and District libraries for the calendar year 1996 with a view to:

- a) identifying policy issues and guidelines; and
- b) determining whether an additional levy is required to cover the libraries' budgets.

This process has been guided by the priorities set for the libraries in the Topp Report and adopted by Convocation in April 1995:

- i) equalizing membership dues for association members; and
- ii) improving technology for county libraries.

2. BUDGET GUIDELINES/FUNDING DECISION

The County and District libraries have had no increases for three years, because the Law Foundation grants were reduced from \$929,000 to \$619,000 per year. This situation has created a deficit position for most of the libraries which was carefully reviewed by the Committee. The cumulative budget overrun for the 47 associations, as shown in the draft budget submissions was \$594,072 for 1996. The Libraries and Reporting Committee decided that it was prepared to fund by means of increased grants a budget overrun of \$300,000 prorated among the associations. It also signalled that it was looking toward deficit reduction in future years and at cost saving measures for the whole system.

3. EQUALIZING ASSOCIATION MEMBER DUES

In December, 1995 the Law Foundation agreed to provide a one-time grant of \$309,500 conditional on that money being used primarily to reduce association member dues. Currently, dues range from a low of \$90 per member in Toronto to \$400 in Lindsay. It would cost \$213,500 to bring every member in the province down to a level of \$200. The one-time grant of \$309,500 from the Law Foundation to be used to reduce member dues to \$200 will be distributed pro rata to each county contingent on the counties setting dues no higher than \$200 per member and on achieving the budget target outlined above.

4. TECHNOLOGY

The rapidly increasing cost of books is a major problem with library budgets. It would be desirable if we could find a way to use technology to deliver legal information to our members in a better way at less cost. The Committee also desires to be proactive in developing an approach to technology instead of simply responding to the publishers' expensive initiatives.

The work already done in this area by the County and District libraries and CDLPA should be incorporated into the Committee's deliberations and built upon. A subcommittee will formulate in the next two month a work plan for the development of C&D libraries technology. Until some definitive recommendations are available to us, it is not recommended that substantial sums be committed to technology. But it is important to remember that funds remain on hand for this purpose. We have an accumulated technology fund from previous years of \$249,000. Also, we have funds available from the budget for the latter half of 1996 which can be devoted to technology.

23rd February, 1996

5. CONCLUSION

Funds exist to meet the needs of the County libraries without a further levy increase of \$35 at this time. However, consistent with the timetable in the Topp Report, we will be making a recommendation about 1997 and future years after further review of technological issues and overall budget policy.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February, 1996

M. Eberts
Chair

It was moved by Mr. Epstein, seconded by Mr. Goudge that the Report of the Libraries and Reporting Committee be adopted.

Carried

THE REPORT WAS ADOPTED

Finance and Administration Committee (cont'd)

It was moved by Mr. Murray, seconded by Mr. Feinstein that the balance of the Report be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

MOTION TO SUSPEND - RE: ANNUAL FEES AND INSURANCE LEVIES

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid all of the first instalment of the annual fee for 1995 - 96 or who has not complied with the requirements of the Errors and Omissions Insurance Plan and whose name appears on the attached list be suspended from February 23, 1996 and until their fees are paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND - RE: N.S.F. CHEQUES

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT the rights and privileges of each member who paid the Annual Fees or the Errors and Omissions Insurance Levy with a cheque which was subsequently dishonoured by the bank and whose name appears on the attached list be suspended from February 23, 1996 and until the necessary fee or levy has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

Professional Standards Committee

Meeting of February 8, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of February, 1996 at 2:00 p.m., the following members being present: W.A. Derry Millar (Chair), Heather J. Ross (Vice-Chair), Robert B. Aaron, W. Michael Adams, Nora R. Angeles, Ronald W. Cass, Thomas E. Cole, Daniel J. Murphy, Helene B. Puccini, Michael Somers, Richmond C.E. Wilson, Bradley H. Wright. John McKay attended as a representative of CDLPA. Michelle Fuerst was also in attendance.

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

A.
POLICY

A.1. CRIMINAL DEFENCE CHECKLIST

A.1.1. A draft of the Criminal Defence Checklist was distributed to the Committee members in December. Portions of the checklist have been reviewed by the Criminal Justice Section of the Canadian Bar Association, and the Criminal Lawyers' Association. The sub-committee which prepared the checklist was chaired by Bruce Durno, and composed of Robert Carter, Q.C., Fletcher Dawson, Michelle Fuerst, Berk Keaney, the Honourable Judge Terrence O'Hara (prior to his appointment to the Bench), the Honourable Mr. Justice Marc Rosenberg (prior to his appointment to the Bench), and George Walker, Q.C.

A.1.2. As was recommended by your committee in January, proposed revisions to the checklist were reviewed by members of the sub-committee and some changes were made.

A.1.3. Your Committee recommends that the Criminal Defence Checklist as amended be approved by Convocation and distributed to the profession.

A.1.4. Your Committee again expressed its appreciation and thanks for the efforts of the members of the sub-committee for its efforts.

B.
ADMINISTRATION

B.1. RECONSIDERATION OF AUTHORIZATION

B.1.1. The member was authorized to participate in the Practice Review Programme in October, 1995 having been identified by the Complaints Department as a potential candidate. At the time of authorization, the member had received ten complaints and two potential LPIC claims since 1990.

- B.1.2. The member feels that his authorization to participate in the Programme is unwarranted and asked the Committee to reconsider same. Your Committee reviewed the member's submissions, a copy of his Law Society profile and the concerns of the Complaints Department.
- B.1.3. The main contention of the member was that family law attracts a higher volume of complaints than other areas of practice. Your Committee concluded that although family law does attract a higher volume of complaints than other areas of practice, this factor was taken into consideration as part of the referral process. The Practice Review Programme can assist the lawyer in communicating better with clients so as to avoid fee and other complaints.
- B.1.4. Given these concerns, and the volume of complaints received in the past two years, your Committee confirmed the authorization.

C.
INFORMATION

C.1. Anonymous Complaints

- C.1.1. At the January meeting of the Committee, staff were requested to provide information about the Law Society's policy regarding responses to anonymous complaints. Enquiries were directed to the Complaints, Audit and Discipline departments; in response, the Committee was advised that:

While there is no question that such complaints are often made by people who are motivated by an improper purpose or who are merely attempting to harass a lawyer, the Society also receives anonymous complaints which ultimately result in investigations that disclose serious misconduct.

In the latter situation, complainants may wish to report legitimate concerns, but not disclose their identity for any number of reasons. A member of a law firm's support staff, a business acquaintance, or others may become aware of mishandling of trust money or possible professional misconduct, but may not wish to be associated with the reporting of the information to the Society.

The Society's responsibility is to investigate complaints that appear on their face to warrant some enquiry. While the fact that the complainant has chosen not to identify him or herself is something that the Society considers in deciding whether to investigate, it is not a determining factor. Depending on the nature of the audit or investigation conducted by the Audit department, it must first be approved by either the Secretary, or the Chair of Discipline, or both.

In practice, the Law Society receives only a handful of anonymous complaints each year. In most cases, the allegations are clearly frivolous or vexatious, as a result of which no investigation is conducted.

- C.1.2. Your Committee recommends that the Discipline Policy Committee consider the development of guidelines for the handling of third party and anonymous complaints.

C.2. PRACTICE ADVISORY SERVICE - STATUS REPORT

C.2.1. The Practice Advisory Service responded to 847 calls in November, 1995 and 575 in December, 1995. The statistics for the past 5 years are:

1991	4,995
1992	4,698
1993	6,796
1994	8,840
1995	9,037

C.2.2. In 1995, the enquiries covered the following areas:

Rules of Professional Conduct	2394	(26.5%)
Law Practice	1139	(12.6%)
- Retirement	373	
- Being sole practitioner	257	
Accounting	1082	(11.9%)
LSUC Act and regulations	601	(6.6%)
File management	503	(5.5%)
General	510	(5.6%)
Negligence insurance information	404	(4.4%)
Publications	333	(3.7%)
Client instructions	127	(1.4%)
Time management	3	(0.03%)
Practice management review	5	(0.05%)
Administrative law	11	(0.12%)
Corporate/Commercial	88	(0.97%)
Corp/Comm mentor assistance	1	(0.01%)
Civil litigation	478	(5.3%)
Civil lit. mentor assistance	14	(0.15%)
Limitations	34	(0.37%)
Construction liens	19	(0.2%)
Criminal	180	(2.0%)
Family	342	(3.8%)
Family mentor assistance	47	(0.5%)
Immigration	58	(0.64%)
Real estate	478	(5.3%)
Wills and trusts	186	(2.0%)

C.2.3. The Start-Up Workshop was presented in Ottawa and London in January, for Bar Admission students, and the regular monthly workshop was held in Toronto on January 12, 1996. Most participants had some years of practice experience but were contemplating opening up as sole practitioners. A member recently called to the Bar spoke on the difficulties of establishing a practice at the present time.

C.2.4. Occasionally the advice given in the workshop is not heeded, but when these practitioners then encounter difficulties, they know where to call for help in extricating themselves. Generally, however, the workshops are well received, and participants continue to call for advice as they establish their practices.

23rd February, 1996

- C.2.5. With only a half-time Systems Adviser and with large numbers of telephone enquiries, the Service cannot regularly provide practice management visits to lawyers in their offices, although often asked for this assistance.
- C.3. DEPARTMENTAL REPORT - PROFESSIONAL STANDARDS
- C.3.1. There were 41 staff attendances scheduled for January, 1996; as is typical, 30% of those cancelled. Staff travelled primarily in Eastern Ontario and the Greater Toronto Area for these attendances.
- C.3.2. The January review panel, composed of Benchers Robert Aaron, Harriet Sachs and Laura Legge, reviewed the practices of 2 lawyers; we appreciate the assistance they provided to these members.
- C.3.3. The Requalification staff committee has completed its review of the responses falling into the "Other" category in the 1994 Qualification Status forms. A total of 850 such responses were received; of these, approximately 200 will be advised that they are not considered to be making substantial use of their legal skills in their current work. A further 365 members will be asked for additional information about their circumstances, to permit an assessment of their skills usage. The "Other" responses indicate that it may be appropriate to add some additional "deemed" categories of employment to the Qualification Status form, in order to simplify the procedure and reduce the administrative workload in 1996.
- C.3.4. Approximately 10,000 Qualification Status forms have been received for 1995; the data contained on these forms must be inputted into the Law Society's computer system before an analysis of these responses can be undertaken, and members advised as to whether they may be required to requalify.
- C.3.5. The Director was invited to speak to the Mortgage Broker Education Program at Seneca College about *Professional Responsibility and the Legal Profession*. A similar presentation was given last year, and it is hoped that aspiring mortgage brokers gained some insight into the Law Society and its members.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February, 1996

D. Millar
Chair

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

Item A.-A.1. - Copy of the Criminal Law Defence Counsel Checklist.

It was moved by Mr. Millar, seconded by Mr. Wilson that the Report including the Criminal Defence Checklist and its distribution to the profession be adopted.

Carried

AGENDA - Additional Matters Requiring Debate and Decision by Convocation

Paralegals

The Treasurer presented the briefing paper on Paralegals.

BRIEFING PAPER - PARALEGALS

The Legislation

The governing legislation for the prosecution of unauthorized practice is s.50 of the Law Society Act, R.S.O. 1990, c. L.8:

- 50.—(1) Except where otherwise provided by law,
- (a) no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold himself out as or represent himself to be a barrister or solicitor or practise as a barrister or solicitor; and
 - (b) no temporary member shall act as a barrister or solicitor or practise as a barrister or solicitor except to the extent permitted by subsection 28.1 (3). 1991, c. 41, s. 4; 1993, c. 27, s. 3.
- (2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.
 - (3) A proceeding shall not be commenced in respect of an offence under subsection (2) after two years after the date on which the offence was, or is alleged to have been, committed. 1990, c. 8, s. 9.
 - (4) Where a conviction has been made under subsection (2), the Society may apply to a judge of the Ontario Court (General Division) by application for an order enjoining the person convicted from practising as a barrister or solicitor, and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the court.
 - (5) Any person may apply to a judge of the Ontario Court (General Division) for an order varying or discharging any order made under subsection (4). R.S.O. 1990, c. L.8, s. 50 (2-5).

A synopsis of the statutory history related to the unauthorized practice of law in Ontario, chiefly in the Solicitors' Act, the Barristers' Act and the Law Society Act since 1912, is provided at Appendix A attached.

The Solicitors Act, R.S.O. 1990, c.S.15, s.1 also appears to restrict the unauthorized practice of law. It has, however, been interpreted in case-law so as to play a relatively minor role (see discussion of Pointts case below at Section V). The section reads as follows:

1. If a person, unless a party to a proceeding, commences, prosecutes or defends in his own name, or that of any person, any action or proceeding without having been admitted and enrolled as a solicitor, he or she is incapable of recovering any fee, reward or disbursements on account thereof, and is guilty of a contempt of the court in which such proceeding was commenced, carried on or defended, and is punishable accordingly.

There is no Provincial or Federal statute which requires any person or agency to prosecute non-lawyers for the unauthorized practice of law. The Law Society of Upper Canada has done this gratuitously for several years. The absence of legislation in this area is in sharp contrast to the Law Society's discipline proceedings which are governed by s. 33 of the Law Society Act. That section calls upon Convocation, its Committees or the Secretary of the Law Society to enforce the Act's discipline section. Nevertheless, the Law Society remains the sole enforcer of the restrictions set up in s. 50 of the Law Society Act.

In addition to the status listed above, Rule 15.01 of the Rules of Civil Procedure in Ontario prevents anyone who is not a lawyer from representing a party to a proceeding in the Ontario Court (General Division). This Rule is being tested with increasing frequency by non-lawyers in Ontario. Decisions of the Ontario Court (General Division) on this point have not been clear. One paralegal has challenged the legislation as a breach of his Charter rights and the matter is currently before the Court of Appeal for Ontario.

The POINTTS Decision, 1987

The legal relationship between the limitation on the practice of law and paralegals was determined in Ontario in Lawrie and Pointts v. Law Society of Upper Canada (1987), 59 O.R. (2d) 161 (Ont. C.A.), aff'g (1986), 58 O.R. (2d) 535 (Div. Ct.), (hereinafter "Pointts." Lawrie set up a business to defend Highway Traffic Act charges. He was charged with "unlawfully acting as a barrister and solicitor" contrary to s.50 of the Law Society Act. The Provincial Offences Act, R.S.O. 1980, c.400, s.51(1) [now R.S.O. 1990, c.P.33, s.50(1)] authorized agents to act in Highway Traffic Act matters (see section IX.3 below). In addition to s. 50, the Law Society relied on the Solicitors Act, R.S.O. 1980, c. 478, s. 1 [now R.S.O. 1990, c. S. 15, s.1 (supra)].

The Law Society argued that the Solicitors Act, s.1 was intended to restrict representation by agents to unpaid friends or others who might assist a party to a proceeding. This argument failed. The Ontario Court of Appeal interpreted s.50 of the Law Society Act and s.1 of the Solicitors Act in order to reconcile the apparently contradictory provisions. In doing so, it took judicial notice of the flourishing practice of agents or paralegals in Ontario under numerous legislative authorizations. The Court found that the penalties in s.1 of Solicitors Act applied only to unauthorized practice as defined in s. 50 of the Law Society Act.

Pointts put to rest the idea that the Ontario legislation prohibited practice by paid paralegals or agents where the activity was authorized by law in other legislation. It should be noted that there are, however, numerous statutes which allow non-lawyers to provide legal services which include the Provincial Offences Act, the Criminal Code (summary conviction matters), the Statutory Power and Procedures Act (almost all tribunals, rules for the Provincial Division Family Law matters), the Courts of Justice Act, Small Claims Court proceedings, the Immigration Act, Tax Court of Canada Act, Corners Act, Landlord and Tenant Act.

The court in POINTTS also addressed the need for legislative action in educating and regulating paralegals:

"It is not the role of this court to determine whether as a matter of policy, the operations of the respondents serve the public interest. It is obvious from the business they have attracted that they are providing an unmet need for service to the public. While no reflection of any kind was made in this case on the respondents, there must be concern about the absence of any control over education, qualification, competence and probity of agents.... No provision exists for disciplining or supervising agents and

protecting the public from financial loss arising from the improper performance of their responsibilities by way of an insurance scheme like that of the law society. (at 169)

It has been observed many times that the prohibition against unauthorized practice of law is not merely to protect qualified lawyers from infringement of their right to practise their profession. [goes on to quote Smith v. Ott] (at 169)

It is the responsibility of the Legislature to resolve these issues of policy. The task of this court is to determine whether, on a proper construction of the relevant statutes, they prohibit what the respondents were doing. (at 169)

It is ironic that there is lack of clarity in the statutes governing the legal profession and their application to the respondents. I commend for the Legislature's attention the clarification of this legislation and also the status of agents and other paralegals which is now a matter of considerable public discussion. (at 178)"

The courts in one other province has followed the approach in Pointts: R. v. Nixon (1990), 260 A.P.R. 271 (Nfld. S.C.T.D.), aff'd Law Society of Nfld v. Nixon (1992), 94 D.L.R. 464 (Nfld. C.A.), leave to appeal refused (1993) 152 N.R. 240 (S.C.C.). Other provinces with more specific prohibitions have essentially forbidden paid agents from practising law: Law Society of British Columbia v. Lawrie, Pointts Ltd. and A.G.B.C. (1988), 31 B.C.L.R. (2d) 209 (B.C.S.C.); Law Society of Manitoba v. Lawrie and Pointts (1989), 61 Man. R. (2d) 36 (Man. Q.B.).

Public Protection - Object of the Legislation

When the untrained provide services which imperatively require the training and learning of a lawyer, vulnerable clients, third parties and the administration of justice suffer real harm. Protection of the public is the paramount concern. Sample complaints about paralegals can be found in Appendix B.

There are numerous statements in case-law to the effect that prohibitions on unauthorized practice exist for the protection of the public. In other words, Section 50 of the Law Society Act is primarily consumer protection legislation.

In R. ex rel. Smith v. Mitchell, [1952] O.R. 896 (C.A.), Laidlaw J.A. writing for the Ontario Court of Appeal stated at 903:

One must not lose sight of the object of the legislation. It is twofold. It is to protect members of the legal profession who have been admitted, enrolled and duly qualified as solicitors against wrongful infringement by others of their right to practise their profession. It is also for the protection of the public and I quote the words of Robertson, C.J.O. in Rex ex rel. Smith v. Ott [1950] O.R. 493 (C.A.), ([1950] D.L.R. 426, 96 C.C.C. 302) as follows:

"To protect the public against persons who, for their own gain set themselves up as competent to perform services that imperatively require the training and learning of a solicitor, although such persons are without either learning or experience to qualify them, is an urgent public service."

The Court of Appeal affirmed the legislation's primary purpose as that of public protection in R. v. Lawrie and POINTTS Ltd. (1987), 59 O.R. (2d) 161 (Ont.C.A.), aff'g 58 O.R. (2d) 535 (Div. Ct.).

A similar view was expressed in: Law Society of British Columbia v. Lawrie, Pointts Ltd. and A.G.B.C. (1987), 18 B.C.L.R. 247 (B.C.S.C.); Law Society of Manitoba v. Lawrie and Pointts (1989), 61 Man. R. (2d) 36 (Man. Q.B.); Nixon v. R. et. al. (1990), 260 A.P.R. 271 (Nfld. S.C.T.D.), aff'd Law Society of Nfld v. Nixon (1992), 94 D.L.R. 464 (Nfld. C.A.), leave to appeal refused (1993) 152 N.R. 240 (S.C.C.).

The paramount concern of protecting the public is often mentioned in unauthorized practice prosecutions: R. v. Brunet (1987), Unreported (Prov. Ct.), Vanek J. (quoted from Smith v. Ott); R. v. Zaza Holdings (1973), Unreported (Co. Ct.), Boland J., ("The reason for confining the practice of law in Ontario to members of the Law Society of Upper Canada is to protect the public from unqualified persons.") R. v. Connort, (1983), Unreported (Prov. Ct.), Scott J., rev'd (1984) Co. Ct, aff'd (1984) Unreported (Ont. C.A.) ("... it is quite clear that the Legislature has framed the section in order to protect people from being on the receiving end of advice of a legal nature given by untrained persons..."); Elguindy v. LSUC (1993), Unreported (Ont. Prov. Ct.), Paris J. ("Section 50 is designed to protect the public from people ... who have no insight into their own limitations.").

Inherent Conflict of Interest

In recent years, the widespread growth of independent paralegal activity has meant that the Law Society is now the sole enforcer of a lawyer's monopoly. There can be no doubt that the public perceives the Society's prosecution of paralegals as self-serving. Reporting on a successful prosecution in January 1996, a reporter for the Toronto Star criticized the Law Society's actions and referred to a statement in the Ianni Task Force Report that the vast majority of prosecutions of paralegals had nothing to do with the quality of their work and that they occurred because local lawyers apparently felt threatened by the competition and raised a ruckus. The newspaper reporter thought that the Law Society would have had better things to do seeing that they had the Legal Aid crisis on their hands. If the Law Society continues to prosecute paralegals, it should be prepared to accept the public perception of its role.

The current legislation is unclear about what constitutes the practice of law and which legal services are to be provided only by qualified lawyers. The arguments made by the Law Society in s. 50 prosecutions, in order to clarify the legislation, merely exacerbate the public perception that the law is unclear, unfair and designed to protect the lawyer's turf.

Issues of conflict of interest are further magnified when the Law Society takes on the dual roles of prosecutor and investigator. This is in contrast with the position of the Crown in criminal prosecutions.

Previous Law Society Reports Concerning Paralegals

1986 - Submission to Attorney-General

In 1986, the Law Society prepared a submission to the Attorney General entitled Provision of Legal Services By Unsupervised Persons. It recommended: "that strict legislative controls be placed on unsupervised persons who are allowed to represent the public in the recommended areas." The approved areas included: minor provincial and motor vehicle offences, minor Provincial Court and civil division matters, Federal and Provincial Labour Boards, and most administrative tribunals except where unsophisticated and vulnerable clients were involved.

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The Report called for a sweeping prohibition against all paid agents and allowed for very narrow exceptions. The prohibition against non-lawyers was to cover the following areas of law: workers' compensation, unemployment insurance and immigration boards, all family law matters, real estate, wills, estates, incorporations, landlord/tenant, summary conviction criminal matters and Provincial Offences where a bail sentence or seizure of a vehicle was at stake.

The Report also recommended that the new legislation be enforced by the Ministry of Consumer and Commercial Relations.

1987 - Establishment of the Task Force

Following the 1987 decision of the Ontario Court of Appeal in Lawrie and POINTTS v. Law Society of Upper Canada (1987) 59 O.R. (2d) 161 (Ont. C.A.), the Attorney General for Ontario announced that a task force would produce a report on the role of paralegals in Ontario.

1989 - Submission to the Task Force

The Law Society prepared a submission to the Task Force on Paralegal in 1989.

It recognized a substantial increase in paralegal activity since the POINTTS decision and reported that Convocation had approved a public information campaign to inform the public that independent paralegals were not qualified, certified nor entitled in law to perform certain legal tasks.

As with the Report in 1986, the 1989 Report affirmed that the rationale for s. 50 prosecutions must be the protection of the public from the harm that can occur when untrained and unsupervised amateurs purport to provide professional services to the public.

The Society opposed the establishment of a self-governing profession of independent paralegals and in an effort to reverse the thrust of the POINTTS decision, called for legislative amendments to limit or restrict the activities of paralegal agents appearing for economic gain. In other words, the Law Society continued to call for an absolute prohibition against non-lawyers in the following areas: wills, family law (including uncontested divorces), real estate, business law and immigration. With respect to administrative tribunals, the Society recommended that all administrative tribunals should establish their own standards for the certification of non-lawyers who appear before them.

1990 - Ianni Task Force Report

The Report of the Ontario Task Force on Paralegals was prepared by Dr. Ron W. Ianni and submitted to the Ministry of the Attorney General in September 1990.

The primary recommendation of the Task Force was that independent paralegals should be subject to regulation.

Other Recommendations of the Ianni Task Force were:

- Appoint a Registrar of Independent Paralegals.
- Formulate Rules of Practice for the independent paralegals.
- Establish a qualification scheme for independent paralegals which would include a two-year course of study at a community college or its equivalent.

- Allow independent paralegals currently practising in Ontario to bypass the mandatory two-year training course if they are able to satisfy the Registrar as to their qualifications.
- Ask the Registrar to determine the permissible areas of practice for independent paralegals.
- Allow paralegals to practise in the following areas:
 - (a) Applications for change of name
 - (b) Applications for criminal pardons
 - (c) Powers of Attorney
 - (d) Simple wills
 - (e) Uncontested divorces
 - (f) Incorporation of small businesses
- Establish disciplinary procedures for independent paralegals.
- Establish a compensation fund for consumers victimized by unethical or unlawful practices of paralegals.

1992 - Law Society's Response to the Ianni Task Force Report

Convocation appointed a Special Committee to examine the Recommendations contained in the Report of the Task Force. In June 1992 Convocation adopted the final Report of the Special Committee and sent it to the Attorney General. It included the following items:

- Endorsement of the principle of regulation, education and discipline of independent paralegals.
- Rejection of any exemptions to formal training and education.
- Support of the principle that paralegals should be required to maintain policies of liability insurance.
- Agreement that independent paralegals should be allowed to appear as agents as long as they:
 - (i) receive mandatory training with the respect to the tribunals in which they appear.
 - (ii) Let the Boards and tribunals before whom agents are allowed to appear be given power to certify those who are competent.
- Disapproval of the proposal to allow independent paralegals to practise in areas of law covering applications for change of name; criminal pardons; powers of attorney; simple wills; uncontested divorces and incorporation of small businesses.

- Request the Attorney General for Ontario to appoint a tri-partite committee comprised of representatives of the Law Society, the Attorney General's Ministry and independent paralegals so that a thorough examination of the areas of practice for independent paralegals can be discussed.

In a supplementary report, the Law Society's Special Committee on Paralegals outlined the discussions which had been taking place with officials in the Attorney General Ministry regarding a more flexible approach to the issue of paralegals which would include initiatives to increase access to legal services by members of the public. These included the increase use of supervised paralegals, the enhancement of the Lawyer Referral Service and the provision of routine legal services by the profession and at specified rates. Although the Report was adopted by Convocation, discussions with the Attorney General did not proceed as both the Ministry's agenda and that of the Law Society changed. Copies of all reports can be obtained on request from the Unauthorized Practice Department.

The Present Situation

In the interest of fiscal restraint since 1992, the Unauthorized Practice Committee has adopted a policy of careful selection of matters for prosecution. The criteria used by the Committee were:

- (i) The seriousness of the danger to the public.
- (ii) The evidence of actual damage suffered by a member of the public.
- (iii) The extent of paralegal operation.
- (iv) The nature and strength of the evidence available.
- (v) The resources available within the budget.

Only the most serious cases have been prosecuted since 1992. The matters selected for prosecution have turned out to be increasingly complex. There are several reasons for this. Paralegals are usually unrepresented and in the absence of any statutory regulation, conduct themselves without any sense of obligation to the court. They are often unable to evaluate the likely success of their case, given the evidence against them and the current caselaw. As a result, the Law Society must respond to a host of preliminary motions, Charter challenges and supplementary motions during trial. For example, one paralegal has brought an application in Divisional Court for prerogative relief against the Law Society for abuse of its prosecutorial role. Challenges in the superior courts on Charter issues are becoming more common despite a substantial body of caselaw supporting the reasonableness of our governing legislation. One paralegal has succeeded in launching a motion for Leave to Appeal in the Supreme Court of Canada despite losing at trial and on appeals both to the General Division and the Court of Appeal of Ontario.

Careful selection of matters for prosecution since 1992 has meant that in the 1994/95 fiscal year, the Unauthorized Practice Department received 272 complaints but prosecuted only 10 paralegals. More recently, the number of prosecutions has risen because several matters settled on the first day of trial. Consistent efforts are made by the Law Society counsel to resolve the issues after full disclosure, but this does not serve as an incentive to settlement unless a lawyer is retained by the paralegal or until the matter reaches the court.

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Between 16% and 20% of the matters are now resolved through correspondence. Typically, the paralegal agrees to some form of voluntary compliance which might include a change to an advertisement along with an undertaking to restrict areas of paralegal practice.

Budget Constraints

The average cost of prosecuting a case now stands at \$5,000 per file. With a 14% increase in the current budget, the Department would be able to prosecute 20 cases per year. Thus far (February 1996), the Law Society has 8 ongoing prosecutions and 2 matters under appeal. Several out-of-town solicitors have offered their services at Legal Aid Rates, a matter that has been encouraged by the County and District Law Presidents' Association.

Response From Members

The Unauthorized Practice Department has received frequent complaints from members who are alarmed at the blatant activity of unsupervised paralegals. The County and District Law Association has expressed concern about the Law Society's apparent inactivity in prosecuting paralegals and has urged more prosecutions.

Role Statement of the Law Society

In 1994 as part of the wide-ranging discussion on the Role Statement adopted by Convocation, the Unauthorized Practice Committee was asked the following question: "How does the duty to govern the legal profession under the Law Society Act, lead the Society to prosecute non-lawyers for the unauthorized practice of law?"

In a report to Convocation dated September 8, 1994, the Committee recommended the Law Society cease prosecution after a year and invite the Attorney General to consider legislation to regulate paralegals. The Committee also suggested that the Society revive a recommendation in its 1992 Report which would urge the Attorney General to establish a tri-partite committee, (comprising of members of the Ministry of the Attorney General, paralegal organizations and the Law Society), to embark on wide-ranging discussions about paralegal activity.

Initiatives in Two Other Jurisdictions

Arizona:

The Board of Governors of the Arizona Bar set up a task force in 1991 to study the problems associated with the unauthorized practice of law in the State. Their report was completed at the end of 1993 and draft legislation was produced in January 1994.

The draft Arizona Legislation described the purpose of the non-lawyer practice rules as follows:

"The right of individuals to represent themselves is an inalienable right common to all natural persons. No one has the right, however, to represent another; it is a privilege to be granted and regulated by the court for the protection of the public.

The public interest requires that individuals be assured of the competence and the integrity of the person to whom they entrust their legal rights. An individual is entitled to be served as disinterestedly by a person who is not motivated or influenced by an allegiance other than to the individual and the system of justice. Competent professional judgment is the product of a trained familiarity of the law and legal processes, and a firm ethical commitment . . . the public is best served in legal matters by a regulated profession committed to the highest ethical standards."

The draft legislation in Arizona limited the role of "Legal Technicians" to preparing and assisting of the filing of forms in the following areas:

- a) residential landlord/tenant matters;
- b) bankruptcies involving only unsecured creditors and no real property assets;
- c) uncontested default dissolutions;
- d) healthcare power of attorneys and living wills;
- e) guardianship of minors;
- f) change of name;
- g) incorporations; and
- h) affidavits:
 - 1. for the transfer of title to real property;
 - 2. for the collection of personal property;
 - 3. evidencing termination of joint tenancy; and
 - 4. evidencing termination of life estate.

The full text of the Arizona draft legislation is attached at Appendix B.

Florida

The Florida Bar received a report from its Special Committee on Non-Lawyer Practice on June 3, 1994. The Committee recognized that non-lawyer practitioners were here to stay and that it was in the public interest that they be regulated and held accountable for their actions. The Committee, therefore, recommended a limited form of regulation, much less stringent than the one proposed in Arizona.

Non-lawyer practitioners would be called "Registered Independent Paralegals" and this designation would apply to any person known as a "legal assistant" or who offers or provides legal information or form-preparation services directly to consumers for compensation without the supervision of a lawyer. The education requirements would include one of the following:

- a) completion of a paralegal training course approved by the Board of Registered Independent Paralegals.
- b) Two years paralegal experience as attested to by a member of the Florida Bar who supervised the paralegal.
- c) A law degree from an accredited law school.

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Although, the Registered Independent Paralegals would not be required to carry errors and omissions insurance, they would not be immune from civil actions based on negligence, fraud or the unsatisfactory quality of services.

Options

1. Keep doing what we have been doing.
2. Increase substantially the number of prosecutions.
3. Increase the budget to allow for more aggressive investigations.
4. Cease prosecutions.
5. Invite the Attorney General for Ontario to consider legislation establishing the training, licensing and regulation or paralegals.

Appendix A

Synopsis of Statutory History of Legislation relating to the Unauthorized Practice of Law in Ontario.

The first legislation of relevance to unauthorized practice was the Law Society Act, 1912 (Ont.), c. 26; the Barristers Act, 1912 (Ont.) c. 27, and the Solicitors Act, 1912 (Ont.) c.28. (at 172).

The Solicitors Act, 1912 s. 3 and 4 prohibited practice as a solicitor. They precluded the collection of a fee and set out an offence of contempt of court. (at 172).

A major change was made in the Solicitors Act in 1940 by the Solicitors Amendment Act, 1940 (Ont.), c. 26, s.1. This was the first statute to set out a statutory penalty for the unauthorized practice of law (page attached). Subsection 6(1) prohibited "practise or for gain or reward act as a solicitor."

A parallel but not identical section was added to the Barristers Act, R.S.O. 1937, c.222, s.4a by the Statute Law Amendment Act, 1944 (Ont.), c.58. This section (page attached) allowed laypeople to appear in court as agents under the authority of other statutes (ss.4a(7)).

The statutes remained substantially unchanged through the 1950's and 1960's. The 1968 McRuer Report brought major revisions of the statutes. The Law Society Act, 1970 (Ont.), c.19 consolidated and revised many of the features of the previous three Acts.

For the first time in the 1970 Act, a section on unauthorized practice was placed in the Law Society Act. This s.50 was essentially the section as it exists today. Section 50 extended the exception previously made for agents to act as barristers to solicitors practice by inclusion of "Except as otherwise provided by law..."

Appendix B

Sample Complaints About Paralegals

Legal service providers require special expertise in order to successfully complete tasks and insure that the interests of the client-public are protected. The arguments surrounding the unauthorized practice of law are not merely abstractions. The Law Society has on file specific examples of harm incurred by members of the public by the unauthorized practice of law. A number of these examples are set out below:

1. One independent paralegal who had a criminal record for fraud, referred to himself as "counsel" both to his customers as well as to the courts. He knowingly prepared a false affidavit used on an ex-parte custody motion in family court. His success on the motion resulted in considerable trauma for a small child who was forcibly removed from the custodial parent. Although the matter was brought back to the court there were no subsequent contempt proceedings and the paralegal, being unregulated, was not required to answer for professional misconduct.
2. A paralegal had drafted a will which was deficient in several important respects. The client finally retained a lawyer who brought it to the attention of the Law Society. The client, nevertheless, faced enormous hurdles in obtaining probate. The paralegal disappeared and the client was left without any access to a compensation fund.
3. An independent paralegal with a criminal record practised in the area of landlord/tenant disputes. He advised tenants to withhold rent and to transfer money to him "in trust" until the disputes were resolved. Once the rent money was collected he abandoned the tenants to settle their own disputes. When the tenants tried to collect the money from him, they were met with threats and with sexual harrassment. No person or body has authority to deal with such complaints about paralegals.
4. A paralegal offered legal services in the area of uncontested divorces. Many of them received their fee in advance and then failed to process the petition in a timely fashion. Some clients, relying on the promises made by the paralegal, made arrangements for their remarriage only to discover that the petition was not filed and other documentation was incomplete. Paralegals appeal to the Ianni Report as giving them authority to act on uncontested divorces.
5. One paralegal readily admitted that he appeared frequently in the Ontario Court (General Division) as well as on indictable matters in Provincial Division. He took the position that he was entitled to offer these legal services because his client wish to be represented by a non-lawyer. This paralegal appeared in court wearing the robes of a barrister and solicitor. The Law Society obtained a conviction after several adjournments and a lengthy trial.

6. A paralegal who is an employee of a Social Assistance Department offered legal services to the general public whom she met in the course of her employment. She offered "extra curricular" assistance in the areas of custody and adoption. Although the complaint was lodged with the Law Society, the client declined to assist in the prosecution for fear of jeopardizing her existing custody arrangements. The paralegal is unregulated and claims jurisdiction as a "representative" pursuant to the Rules for Family Division of the Ontario Court (Provincial Division).
7. A paralegal who holds himself out as a lawyer displays all the trappings of someone his ethnic community would recognize as a successful lawyer. A client, who was in Canada on a visitor's visa, wanted to buy a Canadian business to facilitate her immigration. The paralegal found a business for her and prepared the documentation. This cost her approximately \$130,000 excluding the \$20,000 she paid him for accountancy work. The paralegal persuaded his client that for additional money, he could speed up the application by making a trip to the Canadian Embassy in Ireland. The client ended up financing a number of his European jaunts. In actual fact, the paralegal did nothing for the client and no immigration application was filed or processed. The woman simply lost all her money.
8. A paralegal who advertises himself as a barrister and solicitor of a foreign jurisdiction, acts for people within his own ethnic community. His conduct as well as his arguments before the Immigration Board generated the complaint to the Law society. Among other things, the paralegal accused the Federal Government's presenting officer of acting out of vindictiveness and made outrageous allegations about collusion with the adjudicator. The adjudicator had to intervene several times to restore order. The paralegal made admissions on behalf of his client which were unrelated and highly damaging. The client had no regulatory body with whom to lodge a complaint.
9. The Law Society was advised by the Department of Justice that a paralegal who was a convicted criminal was promoting himself in his ethnic community as an immigration consultant. He advised clients that they had a better chance of staying in Canada if they made false refugee claims about persecution in their country of origin. To make matters worse, the applications were filed out of time thereby generating an appeal to the Federal Court. The paralegal, knowing that only barristers and solicitors had the right to appear in the Federal Court, swore a false affidavit in the fictitious name of a solicitor. In another matter before the Federal Court, he simply neglected to show up.

.....

A debate followed.

It was moved by Mr. Gottlieb, seconded by Mr. Murphy that the Law Society actively and vigorously prosecute paralegals engaged in the unauthorized practice of law.

Carried

ROLL-CALL VOTE

Adams	For
Armstrong	For
Arnup	Abstain
Backhouse	For
Carey	For
Carpenter-Gunn	For
Copeland	For
Cronk	For
Crowe	Against
Curtis	Abstain
Eberts	For
Epstein	For
Feinstein	For
Gottlieb	For
Goudge	For
MacKenzie	For
Manes	For
Marrocco	For
Millar	For
Murphy	For
Murray	For
O'Brien	Abstain
O'Connor	Against
Puccini	For
Ross	For
Ruby	Against
Sachs	For
Scott	For
Sealy	For
Stomp	For
Swaye	For
Thom	Abstain
Wilson	For
Wright	For

It was moved by Ms. Ross, seconded by Mr. Millar that Convocation implement the policy of the Tri-Partite Committee through discussion with the Attorney General.

Ms. Cronk asked that the Ross/Millar motion be amended by replacing the words "Attorney General" with the word "government."

The amendment was accepted by the mover and seconder and was carried as amended.

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

DISCIPLINE POLICY COMMITTEE

Meeting of February 8, 1996

Mr. Scott presented the Report of the Discipline Policy Committee including the items regarding Interim Orders of Suspension and Complaints against Benchers.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE DISCIPLINE POLICY COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of February, 1996 at 1:30 in the afternoon, the following members being present:

D. Scott (Chair), E. Cronk (Vice-Chair), C. Curtis (Vice-Chair), N. Angeles, R. Armstrong, L. Banack, T. Cole, G. Gottlieb, G. MacKenzie, D. McPhadden, R. Manes, H. Sealy, T. Stomp, S. Thom.

M. Brown, M. Devlin, S. Kerr, H. Levin, G. Macri, E. McIntyre, M. Seto, E. Spears and J. Yakimovich also attended.

B.
POLICY

A.1. Statutory Powers Procedure Act (SPPA) Sub-Committee - Interim Decisions and Orders - Suspension

Introduction

A.1.1. In November, 1995, the Policy Section of the Discipline Committee appointed a subcommittee comprising Eleanore Cronk (Chair), Gavin MacKenzie and Frank Marrocco to study the extent to which the new rule-making provisions in the *Statutory Powers Procedure Act* can be used to strengthen the Society's discipline procedures without recourse to legislative amendments.

A.1.2. The Sub-Committee submitted a report to your Committee which deals with the power given by section 16.1 of the *Statutory Powers Procedure Act* to make interim decisions and orders.

Rules to be made under section 25.1 of the SPPA: Interim orders of suspension

A.1.3. Under the *Law Society Act* a member's right to practise cannot be suspended or limited until a full hearing before the Discipline Committee has resulted in a finding of guilt or incapacity and Convocation has considered the Committee's report and made the necessary order: sections 33, 34 and 35 of the *Law Society Act*.

A.1.4. A member's practice cannot be put under the trusteeship of the Law Society until the member's rights and privileges are suspended by order of Convocation (unless the member is disbarred, or dies or disappears): section 43 of the *Law Society Act*.

A.1.5. Investigations and hearings can be lengthy. Unless the Society can obtain from a member who is the subject of discipline proceedings an undertaking not to practise, the member can continue to practise until suspended or disbarred - even though it may be clearly in the interests of the public and the profession that the member should no longer be entitled to do so.

A.1.6. The (Yachetti) Special Committee on Discipline Procedures (1990) recommended that discipline hearing panels should have authority to impose interim suspensions. Provisions to achieve this are included in the package of proposed amendments to the *Law Society Act*.

A.1.7. On April 1, 1995, various amendments to the *Statutory Powers Procedure Act* came into force. Among those amendments were sections 16.1 and 25.1 which read as follows:

defined in the *Regulations Act*.

- 16.1 (1) A tribunal may make interim decisions and orders.
- (2) A tribunal may impose conditions on an interim decision or order.
- (3) An interim decision or order need not be accompanied by reasons.

.....

- 25.1 (1) A tribunal may make rules governing the practice and procedure before it.
- (2) The rules may be of general or particular application.
- (3) The rules shall be consistent with this Act and with the other Acts to which they relate.
- (4) The tribunal shall make the rules available to the public in English and in French.
- (5) Rules adopted under this section are not regulations as
- (6) The power conferred by this section is in addition to any power to adopt rules that the tribunal may have under another Act.

A.1.8. Your Committee is satisfied that Convocation now has the power, under a combination of the *Law Society Act* and section 16.1 of the *SPPA* to make an interim order suspending, or imposing conditions upon, the rights and privileges of a member who has been served with a "complaint under oath" alleging professional misconduct, conduct unbecoming, or incapacity to practise law.

A.1.9. Although satisfied that the Society now has power to make interim orders of suspension or conditions, your Committee is conscious of the serious consequences for a member who is made subject to such an order. The courts have held that the power to make interim orders of suspension is to be used sparingly: your Committee is of the view that the power should be exercised only when it is clearly essential that such an order be made for the protection of the public.

A.1.10. Subject to the observations in the preceding paragraph, your Committee recommends that pursuant to the power given by section 25.1 of the *Statutory Powers Procedure Act*, Convocation make the following rules:

RULES MADE UNDER SECTION 25.1 OF
THE STATUTORY POWERS PROCEDURE ACT, R.S.O. 1990 c. S. 22, AS AMENDED

RULE 1. INTERPRETATION

DEFINITIONS

General: *Law Society Act* definitions apply

1.01 (1) In these rules, unless the context requires otherwise, words that are not defined in subrule 1.01(2) have the meanings defined in the *Law Society Act*.

Specific

(2) In these rules,

"Committee" means the Discipline Committee;

"member" includes a student member;

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

RULE 2. INTERIM DECISIONS AND ORDERS
(MADE PURSUANT TO SECTION 16.1 OF
THE STATUTORY POWERS PROCEDURE ACT)

MOTION

2.01 Where a complaint under oath has been filed in the office of the Secretary and a copy of the 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.

MINIMUM NOTICE PERIOD

2.02 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

Evidence to be by affidavit

2.03(1) Evidence on a motion for an interim order of suspension or conditions shall be given by affidavit.

Contents of affidavit

(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.

Evidence by cross-examination on affidavits admissible

(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.

SERVICE OF AFFIDAVITS

Moving party

2.04 (1) All affidavits on which the motion is founded shall be served on the other party with the notice of motion.

Respondent

(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.

SUBMISSIONS

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

COMMITTEE REPORT

General

2.06 (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.

Report to be signed

(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.

Service of report

(3) 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 and a summons requiring the member to attend thereat.

HEARING BEFORE CONVOCATION

General

2.07 (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.

Decision

(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

Cases of urgency

2.08 (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

Certain rules to apply

(2) Rules 2.01 to 2.05 and rule 2.07 apply, with necessary modifications, to a motion made directly to Convocation under this Rule.

EXPEDITIOUS PROSECUTION OF COMPLAINT

2.09 If an interim order of suspension or conditions is made by Convocation,

the Society shall prosecute the complaint expeditiously; and

the Committee and Convocation shall give precedence to hearing the complaint and making a decision.

FURTHER MOTIONS ON NEW EVIDENCE

2.10 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.

ORDER TO SPECIFY DURATION

2.11 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.

ABRIDGEMENT OF TIME

2.12 The Committee or Convocation may extend or abridge any time prescribed by this Rule.

A.2. Complaints Procedures - Complaints against Benchers

Background

A.2.1. In September 1990, Convocation approved a recommendation contained in the report of the (Yachetti) Special Committee on Discipline Procedures which established a procedure for dealing with complaints against Benchers. The procedure stipulated that:

- 1) All complaints received against Benchers shall be referred to the Complaints Resolution Officer (C.R.O.). The C.R.O., as envisioned by the Callwood Committee, will independently review cases where lawyers refuse to comply with staff suggestions to remedy isolated cases of unsatisfactory professional practice. The C.R.O. will be independent of the Law Society and could be a retired judge, lawyer or a lay-person well versed in the law.
- 2) The C.R.O. shall retain independent counsel to investigate and report to him or her on the complaint.
- 3) Upon receiving the report of independent counsel, the C.R.O. may refer the complaint to the Complaints Authorization Committee.
- 4) The Discipline Complaints Authorization Committee may authorize a formal complaint against the Bencher; however, where the authorization is rejected, it shall give reasons.
- 5) In situations where the Discipline Complaints Authorization Committee rejects a request for authorization but does authorize a lesser formal complaint, care should be taken in the reasons of the Committee not to prejudice a fair hearing of the lesser formal complaint.
- 6) A formal discipline hearing against a Bencher shall be prosecuted by outside counsel retained by the C.R.O., but otherwise shall be heard as any other authorized discipline complaint against a member of the Law Society.
- 7) The independent counsel prosecuting an authorized discipline complaint shall have full authority to prosecute and appeal independently of the Law Society staff and Benchers.

A.2.2. The procedure set out in the report cannot be fully implemented because the creation of the position of Complaints Resolution Officer requires amendment to the Law Society Act and regulations.

Current Practice

A.2.3. In the intervening years, a practice has developed of consulting the Chair and/or Vice-Chairs of the Discipline Committee when a complaint against a Bencher was received. In most cases, instructions were given to retain independent counsel who would report her/his findings to the Chair and Vice-Chairs who would then decide whether further action was required.

A.2.4. Over time, some significant problems with this practice have emerged:

- a) the report of outside counsel to the Chair and Vice-Chairs is not disclosed to either the complainant or Bencher. The Chair and Vice-Chairs have taken the position that the report is privileged and should not be disclosed. In this way, the report is treated in the same manner as all authorization material submitted to them.
- b) referral of the investigative report directly to the Chair and Vice-Chairs does not permit a review of a Law Society investigation by a Lay Bencher.

- c) if the Chair and Vice-Chairs decide that the complaint does not warrant any further action by the Law Society, then there is no means by which important aspects of the investigation can be disclosed to the complainant and Bencher and, the complainant has no recourse to appeal or review the decision.

A.2.5. By contrast, the standard procedure employed to deal with complaints against lawyers who are not Benchers provides for the following:

- i) if the staff investigator determines that no action by the Society is warranted, then a report is sent to the complainant detailing the steps taken to evaluate the complaint and an explanation of why the decision was made not to proceed further.
- ii) this report is available to the solicitor.
- iii) if the complainant disagrees with this decision, they may request a review of the handling of the complainant by a Lay Bencher.

A.2.6. Your Committee considered whether the current practice used for dealing with Bencher complaints requires changes which will bring it into closer conformity with the standard procedures used for dealing with complaints against lawyers who are not Benchers and address the problems described above.

Recommendation

A.2.7. Your Committee recommends that the following procedure be adopted:

- a) all complaints received against Benchers shall be referred to the Chair and/or Vice-Chairs of the Discipline Policy Committee.
- b) independent counsel shall be retained to investigate the complaint and the Bencher in question.
- c) if after completing their investigation, independent counsel concludes that the complaint discloses conduct which may warrant disciplinary action, they shall submit a report to the Chair and Vice-Chairs of the Discipline Policy Committee.
- d) if after completing their investigation, independent counsel concludes that the complaint does not disclose conduct warranting any further action, they shall submit a report to the complainant explaining their position. The report to the complainant shall be made available to the Bencher in question upon request. The report shall inform the complainant that he/she may request a review of the decision by a Lay Bencher.
- e) if, as described in paragraph d), the complainant does not make a request for review, the file shall be closed.
- f) If, as described in paragraph d), the complainant requests a review, then the matter shall be referred to one of the Lay Benchers and the review shall be conducted in the same manner as all cases reviewed by them.

B.
ADMINISTRATION

- B.1. Regulation 708 made under the Law Society Act: s. 15.2 - Forms - Updating Forms

Introduction

- B.1.1. During a recent compilation of the most current forms 3, 4 and 5 for distribution to the membership, staff became aware of several irregularities which are administrative in nature. It is respectfully submitted that said irregularities should be rectified.

Form 3 Schedule A

- B.1.2. Schedule A to form 3 was most recently revised by Convocation on February 24, 1995. At that time two versions were adopted; one to be used until contemplated amendments to section 15.2 of Regulation 708 were effective and the other form to be used thereafter. The contemplated amendments to section 15.2 were filed with the Registrar of Regulations on December 14, 1995.

- B.1.3. In the course of compilation of the most recent and current forms for use by the members. it was discovered that section 12 of said form contained errors; apparently caused by re-writing (and thus re-numbering) of the amended section by the Ministry of the Attorney General. Section 12 of Form 3 Schedule A provides,

In section 12, "applicable files" means files in which the solicitor or firm, as the case may be, has arranged for the lending, or acted for the lender, of money on the security of real estate, or acted for the lender in accordance with subsection 15.2(3), during the reporting period, excluding files of lenders particularized in subsection 15.2(6) or files containing a Schedule A to Form 4 executed by the investor/lender, the borrower(s) and the lawyer or law firm, as the case may be,...

- B.1.4. Subsection 15.2(2) of the Regulation provides the actual triggering mechanism for forms 4 and 5 while subsection 15.2(3) provides,

- (3) Forthwith after the first advance of money to or on behalf of the borrower, the member shall deliver to each lender,
- (a) an original of the report or reporting letter referred to in clause (2)(b); and
- (b) if clause (2)(c) applies, a copy of the declaration of trust.

Additionally, files which are excluded are enumerated in subsection 15.2(4) of the amended Regulation rather than 15.2(6).

- B.1.5. Consequently, it is respectfully submitted that the first paragraph of question 12 be amended to read,

In section 12, "applicable files" means files in which the solicitor or firm, as the case may be, has arranged for the lending, or acted for the lender, of money on the security of real estate, or acted for the lender in accordance with subsection 15.2(2), during the reporting period, excluding files of lenders particularized in subsection 15.2(4) or files containing a Schedule A to Form 4 executed by the investor/lender, the borrower(s) and the lawyer or law firm, as the case may be,...

Form 4

- B.1.6. Form 4 was most recently revised by Convocation on June 23, 1995. The amendment focused on changing the wording in the cautions relating to insurance coverage by the Lawyers Professional Indemnity Company.

Form 5

- B.1.7. As with form 3 schedule A described above, form 5 was revised by Convocation on February 24, 1995. Two versions were adopted, again in recognition of then upcoming changes to section 15.2 of Regulation 708.
- B.1.8. On June 23, 1995, the form 5 then in use was amended, primarily in the cautions in relation to coverage by the Lawyers Professional Indemnity Company. Convocation provided for a methodology for making the change, though it appears that a formal form 5 to be used after the effective date of the regulatory changes was never prescribed. Staff has compiled a form 5 that incorporates the changes in relation to the new section 15.2 and LPIC caution.
- B.1.9. These forms are prescribed pursuant to Rule 56 of the Rules made under section 62(1) of the *Law Society Act*. The methodology for the making or amendment of a rule is set out in Rule 1 of the Rules. Attached hereto as Attachment A is a copy of Rules 1 and 56.
- B.1.10. While the various amendments to forms 4 and 5 have been adopted by Convocation, the requisite motions under Rule 1 do not appear to have been made.
- B.1.11. Staff have interpreted Rule 1(2) so that if the motion is not made "immediately after the adoption by Convocation of that part of the committee's report", that notice is required as specified in Rule 1(1).
- B.1.12. Your Committee recommends approval of motions to amend the necessary rules. Copies of the said motions and other relevant material are attached hereto as Attachment B.
- B.2. Discipline Procedures - Rule 16 - Obligation Of Counsel To Lead Evidence At Committee
- B.2.1. On January 25, 1996, a discipline matter was before Convocation in which the member sought to lead a substantial amount of evidence which had not previously been considered by the Committee which had dealt with the matter. After much debate, the matter was referred back to the Committee so that the new evidence could be considered in the appropriate forum.
- B.2.2. Concern was expressed in Convocation about the fact that this evidence had not been presented at the Committee stage, thereby necessitating further proceedings.
- B.2.3. In this regard, the language used in the Notice under Rule 16 delivered to a member at the beginning of the discipline process was considered.
- B.2.4. Attached as Attachment C-1 and C-2 is a copy of a sample Notice and of Rule 16.

- B.2.5. Specific reference was made in Convocation to paragraphs c) and d) which discuss counsel's obligation in leading evidence before a Discipline Committee and Convocation. Concern was expressed that the language used did not clearly articulate Convocation's position that *all* available evidence being relied upon by the parties must be led at the Committee stage.
- B.2.6. In response to the concerns expressed in Convocation, your Committee recommends that the Rule and the Notice be amended to read as follows:
- 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.
 - 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.
- B.3. Discipline Procedures - Possible Revision to Form of Disbarment Order
- B.3.1. Attached as Attachment D is a copy of Gavin MacKenzie's letter to David Scott dated January 31, 1996 which describes some deficiencies in the standard wording used in Disbarment Orders issued by the Society. As the letter indicates, these deficiencies have caused difficulties when the Society has subsequently attempted to enjoin disbarred lawyers from continuing to practise law.
- B.3.2. Attached as Attachment E is a copy of a recently issued Disbarment Order which in the form now in use.
- B.3.3. Your Committee recommends that the form of Disbarment Order used by the Law Society be amended to read as follows:
- "Convocation of the Law Society of Upper Canada, having read the report and _____ decision of the Discipline Committee dated the _____ day of _____, 199__ in the presence of counsel for the Society, and the solicitor, wherein the solicitor was found guilty of professional misconduct [or conduct unbecoming a barrister and solicitor] and having heard counsel aforesaid;
- Convocation hereby orders that the said _____ be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister or solicitor."

C.
INFORMATION

- C.1. Regulation 708 made under the Law Society Act: Section 9 - Single Bencher Discipline Hearing Panels
- C.1.1. Your Committee reported to Convocation in January that a regulation had come into force permitting the quorum of the Discipline Committee convened to hear certain types of cases be one Bencher.
- C.1.2 One Bencher panels will begin hearing cases in March, 1996.
- C.1.3 Benchers sitting on these panels are asked to provide any comments or criticisms they have to Michael Brown so that the impact of this new procedure can be monitored.

ALL OF WHICH is respectfully submitted

D. Scott
Chair

It was moved by Mr. Scott, seconded by Ms. Cronk that the Report be adopted.

Carried

It was moved by Mr. Scott, seconded by Mr. Ruby that the motions to amend the Rules made under section 62(1) of the Law Society Act (Forms 3, 4 and 5) contained in the Report be adopted.

Carried

APPLICATION FOR COSTS

It was moved by Mr. Scott, seconded by Mr. Ruby that the appointment to replace two members of a committee dealing with an application for costs be delegated by the Treasurer.

Carried

Convocation took a brief recess at 4:00 p.m. and resumed at 4:10 p.m.

Clinic Funding Committee

Mr. Copeland presented the Report of the Clinic Funding Committee.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CLINIC FUNDING COMMITTEE begs leave to report:

Your Committee met on February 14, 1996. Present were: Paul Copeland, Chair, Harriet Sachs, Gordon Wolfe, Pamela Mountenay-Giffin. Also present: Joana Kuras, Clinic Funding Manager.

A.
POLICY

Nil

B.
ADMINISTRATION

- B.1 The Clinic Funding Committee recommends Convocation's review and approval of the funding allocations for the following one-year projects to June 30, 1996:
- B.1.1 On-site assistance to tenants involved in landlord/tenant disputes at 361 University Avenue supervised by Metro Tenants Legal Services, in an amount up to \$47,725.
 - B.1.2 Translator/interpreter services shared by three clinics, and supervised by Jane Finch Community Legal Services, in an amount up to \$36,000.
 - B.1.3 Legal services provided to the AIDS/HIV community by HIV & AIDS Legal Clinic, in an amount up to \$105,000.

C.
INFORMATION

The Clinic Funding Committee has been delegated responsibility to administer and direct the funding of community legal clinics. The Committee's function is established by Regulation (Schedule A) and its role described in the Policy Statement of the Clinic Funding Committee (Schedule B).

The Clinic Funding Committee established a 10-person Advisory Group in July, 1995 to provide advice and make recommendations to clinic funding staff about clinic system issues. After consulting with the clinics, the Advisory Group prepared an information document concerning the role of clinics which has been distributed to clinics (Schedule C).

The Committee published and distributed a formal Annual Report until 1992. Due to fiscal constraints activity reports are now available on request only. A report on the operations of clinics in 1995 will be provided for the March meeting of Convocation.

ALL OF WHICH is respectfully submitted

P. Copeland
Chair
Clinic Funding Committee

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

- Item C. - Copy of the Regulation made under the Legal Aid Act. (Schedule A)
- Item C. - Copy of the Policy Statement of the Clinic Funding Committee. (Schedule B)

- Item C. - Copy of a paper entitled The Role of Community Legal Clinics in Ensuring Access to Justice in Ontario. (Schedule C)

The Report to be taken as read was adopted.

Carried

THE REPORT WAS ADOPTED

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

Legal Aid Committee

Meeting of February 7, 1996

Mr. Goudge presented the Report of the Legal Aid Committee.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 7th of February, 1996 at 2:00 p.m. the following members being present: Stephen Goudge, Chair, B. Armstrong, H. Burroughs, M. Buist, P. Copeland, and C. Curtis, L. Hart, D. Fox, M. Fuerst, E. Lay, A. Rady, M. Stanowski, T. Stomp and B. Sullivan.

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

David Porter, Deloitte Touche also attended.

A.
POLICY

B.
ADMINISTRATION

- 1. REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS FOR THE MONTH OF JANUARY, 1996

The Legal Aid Committee received the Report on the Payment of Solicitors Accounts for the Month of January, 1996 which is attached hereto and marked as SCHEDULE A.

- 2. REPORT ON THE STATUS OF REVIEWS IN THE LEGAL ACCOUNTS DEPARTMENT FOR THE MONTH OF JANUARY, 1996

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

C.
INFORMATION

1. PRIORITIZATION

The Committee endorsed the Prioritization Reports prepared by the three consultation groups. The reports may be found at SCHEDULES, C, D AND E, and should be regarded as living documents. The consultation groups will continue to meet on a regular basis. These principles of prioritization will be implemented by the Plan forthwith in order to carry out Convocation's decision that, to achieve the necessary savings, the programme be reduced to approximately 100,000 certificates next year.

2. TARIFFS

The Committee adopted a report on the development of the new tariffs. Charts summarizing the changes may be found at SCHEDULES F - N. In keeping with Convocation's decision, the Tariffs should result in an average case cost level equivalent to 95% of the March, 1994 levels. The Tariffs will also assist the Plan in predicting future costs.

ALL OF WHICH is respectfully submitted

S. Goudge
Chair

February 23, 1996

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

- Item B.-1. - Copy of the Report on the Payment of Solicitors Accounts for the Month of January, 1996. (Schedule A)
- Item B.-2. - Copy of the Report on the Status of Reviews in the Legal Accounts Department for the Month of January, 1996. (Schedule B)
- Item C.-1. - Copy of the Prioritization Reports. (Schedules C, D and E)
- Item C.-2. - Copy of charts of the changes in the Tariffs. (Schedules F - N)

It was moved by Mr. Goudge, seconded by Ms. Curtis that the Report be adopted and that the Treasurer in consultation with the Chair of Legal Aid be authorized to sign the Regulations implementing the proposals regarding Tariffs.

Carried

THE REPORT WAS ADOPTED

CONVOCATION ROSE AT 4:55 P.M.

Confirmed in Convocation this 22 day of March, 1996


Treasurer