

MINUTES OF CONVOCATION

Friday, 4th April, 1997
9:00 a.m.

PRESENT:

The Treasurer (E. Susan Elliott), Aaron, Adams, Angeles, Armstrong, Arnup, Backhouse, Bellamy, Carey, Carpenter-Gunn, Chahbar, Cole, Copeland, Cronk, Crowe, Curtis, DelZotto, Eberts, Epstein, Farquharson, Feinstein, Finkelstein, Gottlieb, Harvey, Krishna, Lamek, MacKenzie, Marrocco, Murray, Ortved, Pepper, Puccini, Ross, Sachs, Scott, Sealy, Stomp, Strosberg, Swaye, Thom, Topp, Wardlaw and Wilson.

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IN PUBLIC

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The reporter was sworn.

REPORTS TAKEN AS READ

It was moved by Ms. Ross, seconded by Ms. Carpenter-Gunn THAT the Report of the Director of Bar Admissions and the Draft Minutes of February 28th, 1997 be adopted.

Carried

COMMITTEE REPORTS

REPORT OF THE DIRECTOR OF BAR ADMISSIONS

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Bar Admissions begs leave to report:

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates having successfully completed the Bar Admission Course now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, April 4th, 1997:

Markus Daniel Ebert	38th BAC
Alan Burdett Edwards	37th BAC
Sandra Jean Heather Evans	38th BAC
Phyllis Ann Heller	38th BAC
Camille Micheline Marie Joly	38th BAC

Debbie Lynn Middlebrook	38th BAC
Bonnie Gail Patrick	38th BAC
Kenneth William Roberts	35th BAC
Lewis Thomas Smith	37th BAC
Fred Simcha Wang	38th BAC

B.2. MEMBERSHIP UNDER RULE 50

B.2.1. (a) Retired Members

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

Harry Drexler	Toronto
Gordon Murray Edwards	Erin
Gerard Denis Fitzhenry	Brampton
John Turner Goodall	Wingham
John Michael Hart	St. George
Doreen Carol Henley	Ottawa
Lawrence Marshall Keay	North York
Emanuela Lee Monaco	Toronto
Lloyd Francis Oswald Raphael	Ottawa
Cornelia Arevalo Soberano	Toronto
David Anthony Bedford Steel	Mississauga
Ronald Warren Thompson	Nepean

B.2.3. (b) Incapacitated Members

B.2.4. 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:

Susan P. Byles	Toronto
Elizabeth Anne Kirley-Switzer	Tottenham
Evlyn Louise McGivney	Toronto
David Harry Milman	Bolton
Roger Joseph Smith	Toronto
Philip Stephen Staddon	Brighton

B.3. RESIGNATION - REGULATION 12

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

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Anne Denise Cashin, of Calgary, AB, was called to the Bar on April 6, 1983. She was engaged in the private practice of Ontario law from 1983 to 1989 and practised as corporate counsel from 1993 to 1995. The 1997 annual fee is outstanding.

Alan Philip Cooke, of Ottawa, was called to the Bar on February 5, 1993 and practised law from February 1993 to August 1995 exclusively with the firm Macdonald, Affleck. The 1997 annual fee is outstanding.

Derek Arthur Danielson, of Scarborough, was called to the Bar on April 9, 1976 and has never practised Ontario law. The 1997 annual fee is outstanding.

Clarence Henri Leon Debelle, of North Vancouver, BC, was called to the Bar on April 14, 1988 and has never practised law. He was suspended November 1, 1996 for non-payment of the annual fee. The 1996 and 1997 annual fees are outstanding.

Joseph Paul Dubé, of Atholville, NB, was called to the Bar on February 28, 1992 and has never practised Ontario law. The 1997 annual fee is outstanding.

John Leonard Graham, of Ottawa, was called to the Bar on February 5, 1992 and practised law from January 1993 to June 1993. The 1997 annual fee is outstanding.

Gurneet Nita Grewal, of Warwick, Bermuda, was called to the Bar on February 16, 1995 and has never practised Ontario law. The 1997 annual fee is outstanding.

Kenneth Gordon Gwynne-Timothy, of St. Catharines, was called to the Bar on February 8, 1994 and has never practised Ontario law. The 1997 annual fee is outstanding.

Marilyn Elizabeth Jackson, of Tweed, was called to the Bar on April 8, 1976 and practised law from 1997 to 1992. The 1997 annual fee is outstanding.

Nicholas John Koppert, of London, was called to the Bar on February 24, 1997 and has never practised Ontario law.

Michele Leighton Symons, of London, England, was called to the Bar on February 16, 1995 and has never practised Ontario law. The 1997 annual fee is outstanding.

Maxwell Laird Morden, of London, was called to the Bar on March 23, 1973 and practised law from 1973 to 1994. The 1997 annual fee is outstanding.

Virginia Anne Schuler, of Yellowknife, NT, was called to the Bar on April 10, 1982 and practised Ontario law from 1981 to 1982. She was suspended February 25, 1983 for non-payment of the annual fee. The annual fees for the years 1982/83 to 1992/93 inclusive are outstanding.

Rachael Elizabeth Strong, of Ottawa, was called to the Bar on February 5, 1996 and has never practised Ontario law. The 1997 annual fee is outstanding.

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Kimberly Marie <u>LeClair</u> (Birth certificate)	Kimberly Marie <u>Michaelis</u>
Zofia Wiktoria <u>Headford</u> (Marriage certificate)	Zofia Wiktoria <u>Morris</u>
DeeAnn Marie Patricia <u>Obidowski</u> (Change of name certificate)	DeeAnn Marie Patricia <u>Gonsalves</u>
Jasmine Mirian <u>Deborak</u> Palumbo (Birth certificate)	Jasmine Mirian <u>Deborah</u> Palumbo
<u>Arkadi</u> Spektor (Change of name certificate)	<u>Aaron M.</u> Spektor
Marni Beth <u>Sternthal-Dicker</u> (Marriage certificate)	Marni Beth Sternthal <u>Dicker</u>
Susan Ann Alter <u>Tateishi</u> (Birth certificate)	Susan Ann <u>Alter</u>

C.5.

ROLLS AND RECORDS

C.5.1.

(a) Deaths

The following members have died:

Joseph Kimball Yakabuski Toronto	Called: April 11, 1986 Died: November 24, 1993
Frank Alistair McHardy-Smith London	Called: November 18, 1926 Died: July 13, 1994
Athol Telford Sterling Scarborough	Called: June 26, 1958 Died: December 11, 1995
George Arthur Fallis Toronto	Called: February 19, 1942 Died: April 28, 1996
Grant Ramage McLennan Perth	Called: September 20, 1934 Died: November 5, 1 996
Thomas Mercer Toronto	Called: September 18, 1959 Died: November 26, 1996
Michael Allen Harte Toronto	Called: March 30, 1990 Died: January 4, 1997
Sydney Reid Johnston Mississauga	Called: May 25, 1923 Died: January 22, 1997
David Ynyr Lewis Mississauga	Called: June 23, 1955 Died: March 1, 1997
William Jerry Melko Thornhill	Called: April 13, 1978 Died: March 4, 1997

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Dante Frank Marinelli
Niagara Falls

Called: March 24, 1972
Died: March 7, 1997

ALL OF WHICH is respectfully submitted

DATED this the 4th day of April, 1997

THE REPORT WAS ADOPTED

DRAFT MINUTES OF FEBRUARY 28TH, 1997

THE DRAFT MINUTES WERE ADOPTED

(See Draft Minutes in Convocation file)

COMMITTEE APPOINTMENT

It was moved by Ms. Carpenter-Gunn, seconded by Mr. Cole THAT Elvio DelZotto be appointed as a member of the Legal Aid Committee.

Carried

CALL TO THE BAR

The following candidates were called to the Bar by the Treasurer and taken by Mr. Armstrong before Mr. Justice Gerald F. Day to sign the Rolls and take the necessary oaths.

Markus Daniel Ebert	38th Bar Admissions Course
Alan Burdett Edwards	37th Bar Admissions Course
Sandra Jean Heather Evans	38th Bar Admissions Course
Phyllis Ann Heller	38th Bar Admissions Course
Camille Micheline Marie Joly	38th Bar Admissions Course
Debbie Lynn Middlebrook	38th Bar Admissions Course
Bonnie Gail Patrick	38th Bar Admissions Course
Kenneth William Roberts	35th Bar Admissions Course
Lewis Thomas Smith	37th Bar Admissions Course
Fred Simcha Wang	38th Bar Admissions Course

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REASONS OF CONVOCAATION

The Reasons in the matter of Harvey Samuel Margel were filed.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Harvey Samuel Margel, of the City of North York, a barrister and solicitor

REASONS OF CONVOCATION

Michael Brown - counsel for
The Law Society of Upper Canada

Brian H. Greenspan - counsel for
the solicitor

REASONS

1. On December 8, 1995, Convocation was asked to confirm the Report and Decision of the Discipline Committee dated the 7th of January 1995, in the matter of HARVEY SAMUEL MARGEL. This Report and Decision is a further consideration of a Hearing decided on the 18th of March, 1994.

2. The allegations made by the Law Society against the Solicitor related to alleged professional misconduct arising out of his practice as a Real Estate Solicitor in the years 1988, 1989 and 1990, as evidenced by improper reporting and improper registration practices. The evidence and Agreed Statement of Facts identified seven (7) transactions out of approximately nine hundred (900) transactions during that time span. It was represented to Convocation that the Law Society Investigators had focused on these seven (7) transactions and that agreement had been reached with regard to the accuracy of the facts set out therein.

3. The issue was further complicated by the fact that during the time under consideration Mr. Margel had a partner, David Warga and that Warga was likewise charged with professional misconduct arising out of the operation of the office and these seven (7) sample transactions.

4. Warga was found to be guilty of professional misconduct and received a penalty of three (3) months suspension from practice. Margel was found by the panel to be similarly guilty of professional misconduct but in the panel's view that guilty merited nine (9) months suspension. At Convocation it was argued by the Solicitor for Margel that his client should not be trebly penalized in circumstances where each man was equally responsible for the troubles creating the misconduct.

5. The Hearing of December 8, 1995 was further complicated by the fact that the confirmation issue had come before Convocation on an earlier date (the 26th day of May 1994). Convocation required the Committee to review its decision bearing in mind representations made by both the then Counsel for the Society and Mr. Margel's Solicitor, relating to the description of the activities of Margel as being "false". The Committee reviewed its earlier findings and representations made by the Solicitors and concluded that notwithstanding the verbiage their decision was based upon right principals and a penalty of nine (9) months was appropriate.

6. The evidence as presented to the Committee and as made available to Convocation confirmed that both Margel and Warga were called to the Bar in 1973 and that they practised in partnership at all material times. Each of the Solicitors had involvements with the files in question. Some of the misconduct appeared to be exclusively Warga, some appeared to be exclusively Margel and in many instances appeared to be joint responsibility, arising out of their failure to supervise the work of others for whom they bore responsibility. In addition however there appears to be sound reason for determining that Margel bore a larger responsibility for the difficulties caused to them personally and to their clientele.

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7. The transactions bore a common thread arising out of the Solicitors involvement with "First Western Group" was primarily the responsibility and client of Margel. In the transactions reviewed, Margel appears to represent the First Western Group or its principal Mr. Benson and the evidence further suggests that the financial difficulties caused to the other clients of Margel and Warga arose in large measure from the financial difficulties of Mr. Benson and his company. As is so often the situation were the creditor able to meet its financial commitments the sequence of registration, or failure to adequately advise investors, would never have been identified to the Society. Mr. Benson is described as being a man of strong personality and when he got into financial difficulties it came as a complete surprise to the two solicitors. It would appear that as Margel was responsible for the client, the First Western Group, that prima facie his responsibility was that much greater.

8. The evidence further identified that (paragraph 10 of the Agreed Statement of Facts) "Margel on several occasions found investors for First Western properties. Warga also found investors for First Western properties on at least two occasions..." As it was the investors who were the persons injured in this transaction, it would seem that Margel's responsibility was considerably larger than Warga's.

9. It was further agreed in the Agreed Statement of Facts that at the date of the creation of this document two claims in the total amount of \$200,000.00 had been ledged with the Law Society in respect to Warga and thirteen in the amount of \$2,000,000.00 had been ledged in respect to Margel. While it was pointed out to Convocation that none of these claims resulted in payouts from the Compensation Fund, the significance of two claims against Warga as opposed to thirteen claims against Margel appears to bear a consistent thread as to relative responsibility for the difficulties suffered by the clients of this law practice.

10. Convocation was requested to permit Mr. Margel to speak to Convocation on his own part. Mr. Margel explained to Convocation the fact that he was not a dishonest lawyer and the depths of depression to which the events had driven him. It is Mr. Margel's position that "I am not a reckless or careless lawyer. I am a hands on, conscientious lawyer". Hopefully this indeed is the situation at the present moment, as the evidence would clearly indicate the contrary during the years in question. There is a general principal that deference and respect should be given to the Decisions of a Committee unless there is manifest error on the face of the record, or error in principal. Can Convocation vary the Decision of the Committee as to the extent of penalty by finding that the Committee had exercised proper discretion in one area, but failed to exercise proper discretion in another area?

11. Convocation was of the view that the Committee acted on appropriate principals in finding that Margel was guilty of more significant professional misconduct than Warga. Having been apprised of the facts as aforesaid, Convocation concluded that equality of penalty would be inappropriate.

12. Convocation assessed the entire circumstances of this matter. The significant time span between the events and the time of decision making, the clear contrition and sincerity of Margel as to future activities of a similar nature and Mr. Margel's solicitor's persuasive argument as it tied into mutual responsibility for staff supervision were weighed. Having done so, they were compelled by the argument of the Law Society Counsel that joint responsibility is not necessarily equal responsibility and that in fact the appropriate penalty for the facts as set was a penalty of six (6) months rather than the nine months

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recommended by the Committee. The reasons for Warga having his penalty reduced to only three (3) months was not reviewed but clearly his penalty did not establish a guideline or norm in itself. Convocation was provided by counsel for the Society with the Decisions of the Society in E. Lawrence Stone, Stephen Aaron Rosen and Giovanni Faraci. The suspension in Stone was one (1) year, in Rosen was six (6) months and Faraci was eight (8) months, in circumstances not entirely dissimilar to the case before Convocation. It was felt by Convocation that the acceptance of the lowest end of the cases referred to by Counsel was the appropriate point and the Decision of the Committee was modified accordingly.

DATED this 28th day of February, 1997

Richmond Wilson

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IN CAMERA

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer announced the commencement of legal action by the Law Society against Ernst & Young and Tillinghast.

LEGAL AID

Mr. David Porter, a Deputy Director of the Ontario Legal Aid Plan presented a financial overview of the Plan. A handout of the graphics used in the presentation was distributed to Convocation.

Mr. Porter took questions from the Bench following his presentation.

Convocation took a brief recess at 10:55 a.m. and resumed at 11:10 a.m.

LEGAL AID (cont'd)

The discussion continued on the financial presentation by Mr. Porter.

It was moved by Ms. Eberts, seconded by Mr. DelZotto that a transition team be established immediately to bring back to Convocation a timetable for various outstanding issues to be brought to conclusion with the time-frame to be not less than 1 year prior to the end of the MOU.

Carried

SUBMISSIONS TO McCAMUS LEGAL AID REVIEW COMMISSION

Ms. Eberts presented the Report setting out the Law Society's submissions and the propositions on which the submissions were based to the McCamus Legal Aid Review.

Legal Aid Committee
March 19, 1997

REPORT TO CONVOCATION

Nature of Report: Decision-Making, Information

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Appendix A - Memo re: Draft Submission to Legal Aid Review

Appendix B - Monitor's Report - January 1997

Appendix C - Financial Reports - February 1997

The Legal Aid Committee met on March 19, 1997. In attendance were:

Committee members: Mary Eberts (Chair), Heather Ross (Vice-Chair), Tom Carey, Carole Curtis, Tamara Stomp, Elvio DelZotto.

The Treasurer, Susan Elliott

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

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

In attendance for the entire meeting: Susan Switch and Mary Reilly, Family Lawyers' Association.

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1. OLAP and LSUC Submission to the McCamus Legal Aid Review

The Committee reviewed the Plan's submission to the McCamus Legal Aid Review. The Committee also heard an update from the Treasurer about the Law Society's submission to McCamus on the issue of governance.

The following matters are reported on for information only:

2. Expansions and Improvements to Family Law Services

Due to the serious effects of the tariff cuts and prioritizations in family law, the Committee has been studying ways to improve service to clients and encourage lawyers to take on family certificates. Following extensive consultations with the Family Lawyers' Association and women's groups, the Committee has approved several improvements, which will allow an extra 5,000 certificates to be issued every year for the next 2 years. The changes include one additional time authorization in very complex cases, increased discretion (up to 10 per cent) and an extension of services covered to include some priority two issues.

Starting April 1, 1997, one additional time authorization can be issued in very complex cases. The major issue in each of these cases will receive a second time authorization. For example, in custody cases, the basic allocation of 6.5 hours plus 11.5 hours will be extended, so that an additional 11.5 hours is available for the custody issue. This change will allow lawyers to have more time to prepare cases and provide better service to clients.

The tariff currently allows for a maximum of five per cent of the total fee pool to be paid via discretion. The Committee approved a new maximum of 10 per cent of the total fee pool to be paid for discretion, which will be administered by the Legal Accounts Officer.

Most second priority issues will now be eligible for certificates. These include:

- variations of custody where there is no emergency
- child or spousal support when custody has changed
- enforcement of support if there is merit; initial applications for access to maintain an established parent/child bond
- exclusive possession of property if there are safety or abuse issues
- preservation of property if there is a risk of dissipation (a spouse's business, for example)

These improvements are expected to cost an estimated \$18 million over two years and have already been budgeted for. The changes will affect all certificates issued after April 1, 1997, as well as any accounts which have not been finalized as of March 31, 1997. If an account has been finalized before March 31, 1997, the account will not be eligible for the improvements.

The Plan's Monitor still needs to approve these changes before it comes into effect April 1, 1997. A comprehensive communications plan includes a province-wide news release, information letters and notices to Legal Aid area directors, staff, lawyers, lawyers' associations and the judiciary. As well, a brochure and background information will go to all women's shelters and points of contact for women seeking advice and assistance, in order to inform the public of the changes and availability of certificates.

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3. Update on financial testing for duty counsel services

Training of all duty counsel lawyers began the week of March 17, 1997, and will be complete by April 1. A local news release to affected communities and legal media is being prepared for March 26 or 27, in order to inform the public of the changes. The judiciary, court staff, referral agencies and police stations have now all been informed of the change. Overall, reaction has been positive and no problems in implementation are expected.

4. Update on the McCamus Legal Aid Review

The Review Panel will hold public meetings in Thunder Bay, Ottawa, London, Windsor, Toronto and Sudbury. Legal Aid area directors will be involved in setting up these meetings. The panel will also be meeting with various lawyers' associations.

5. Funding

Morin

The Plan has learned that the terms of reference for Judge Gold's review of compensation were limited to Mr. Morin and his family members. It did not include a look at whether then Plan should be reimbursed by the government. The only alternative now is to write to the Deputy Attorney General Larry Taman. The Director will prepare the letter.

Monitor's Expenses

Although Plan management and the Law Society continue to take the position that the Government of Ontario should pay the full costs of the Monitor, the government has subtracted the funds for the monitor from the Plan's most recent installment. The Treasurer is awaiting a legal opinion and will report back on how best to approach the government.

Finance and Audit Committee

The Finance and Audit Committee has requested that the budget include expenses for area office and provincial office administration. This will be sent on to the Committee immediately.

6. Monitor's Report

January 1997

The Monitor's Report for January 1997 is attached. In their executive summary, Ernst and Young report that January's statistical and financial results continue to be within the parameters of the 1996/97 forecast and business plan.

Old Certificates

In the January report, the Monitor was concerned about the liability on old certificates and asked the Plan management to develop a proposal to identify outstanding certificates and the amounts remaining to be billed. Plan management has developed the following proposal which will be reviewed by the Monitor.

Certificates issued in 1984 and 1985 (approximately 3,000 outstanding) will be cancelled. Lawyers holding certificates issued between 1985 and 1991 will receive letters asking them to inform us as to how much of the work has been done and how much is outstanding. If there is no response, these certificates will be cancelled. Area office staff will research all outstanding certificates issued between 1992/93 and 1993/94 and send lawyers letters to determine if there is still work being done on those cases (approximately 58,000).

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7. Area Committee Appointments

The Committee approved three appointments to area committees as recommended by the Provincial Director; Elaine Rosewell and Elizabeth Capitano in Haldimand, and Annette Wilson in Peel.

8. Financial Reports

The financial reports for February 1997 are attached.

9. Staffing

The position of Statistical Analyst has now been filled and Manny Daoud will begin April 1, 1997. Nathalie Champagne is taking over as Ottawa Area Director for Keith Wilkins as of April 1, 1997, while Mr. Wilkins moves to Provincial Office to begin his duties as Coordinator of Client Services.

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

- (1) Copy of memo re: Draft Submissions to Legal Aid Review.
- (2) Copy of Monitor's Report - January 1997.
- (3) OLAP Financial Reports, February 1997.

Also distributed to the Benchers were the following:

- (a) Graphics - Ontario Legal Aid Plan - Financial Results and the 'MOU'
- (b) Draft Submission of Law Society of Upper Canada - Governance of the Ontario Legal Aid Plan
- (c) Draft document entitled Access to Justice: Legal Aid in Ontario

A discussion followed.

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

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Bellamy, Carey, Carpenter-Gunn, Chahbar, Cole, Copeland, Cronk, Crowe, Curtis, DelZotto, Eberts, Epstein, Feinstein, Gottlieb, Harvey, MacKenzie, Marrocco, Murray, Ortved, Pepper, Puccini, Ross, Scott, Sealy, Stomp, Strosberg, Swaye, Thom, Wilson and Wright.

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IN PUBLIC

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4th April, 1997

SUSPENSIONS - Re: E & O INSURANCE LEVY

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid the Errors and Omissions Insurance Levy, and whose name appears on the attached list, be suspended from April 4th, 1997 and until their levy is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

RE: FINANCE REPORT

Mr. Pepper raised the issue of the upcoming construction to the government portion of Osgoode Hall.

The Treasurer advised that the Chief Executive Officer would report on this matter at the next Convocation on April 25th.

SUBMISSIONS TO McCAMUS LEGAL AID REVIEW (cont'd)

Discussions continued.

Convocation expressed its consensus on the Scott/Puccini/Cronk position regarding funding.

No motion was put on the position that the Law Society withdraw as administrator of the Plan.

There was no clear consensus on changing the wording of the Report in regard to the position that the Law Society acts independently rather than saying the Law Society is independent of the profession.

It was agreed that prior debates of Convocation be omitted from the Report.

It was moved by Mr. Wilson, seconded by Mr. Chahbar that the report respond to the questions posed by the Legal Aid Review in an academic and thoughtful way supporting the Law Society's involvement as administrator of the Plan.

Not Put

It was moved by Mr. Adams, seconded by Mr. DelZotto that the Wilson/Chahbar motion be tabled.

Carried

It was moved by Ms. Cronk, seconded by Ms. Ross that Convocation adopt the propositions as amended.

Carried

A. NATURE AND SCOPE OF THE ISSUE TO BE ADDRESSED

1. On January 24, 1997 Convocation gave preliminary approval to the formation of a Task Force on the impact of regulation on the profession. As will become apparent in this report, the ambit of the Task Force has been defined more expansively to include examination of the future of the profession and issues flowing from that broad topic.
2. The Treasurer advised Convocation that at the March (now April 4) Convocation it would be provided with terms of reference for the Task Force, including a framework for its analysis, time lines, membership, and discussion of budgetary issues.
3. The Treasurer convened a Task Force working group ("the working group") to develop a proposal for terms of reference. Participants have included the Treasurer, benchers Robert Aaron, Robert Armstrong, Carole Curtis, Mary Eberts, Ron Manes, Derry Millar, David Scott, Harvey Strosberg, LPIC president Malcolm Heins and Law Society staff members Susan Binnie, Katherine Corrick, Richard Tinsley, Stephen Traviss and Jim Varro.
4. Convocation is requested to confirm, subject to any direction it feels is appropriate, the proposed terms of reference set out in this report.

B. BACKGROUND

5. At the January 1997 meetings of the Professional Development and Competence Committee and the Professional Regulation Committee, each committee identified the need to review and assess a broad spectrum of issues, which included how the Society regulates members, the economic circumstances of members, legal services marketplace issues including competition for provision of services, practice structures and technology.
6. The Treasurer considered that the most effective way to address these issues was to refer them to a Task Force, with clearly articulated terms of reference.
7. In providing Convocation with detailed terms of reference, this report:
 - a) places the Task Force's mandate in the context of the Law Society's role statement/ commentaries and what they say about the Society's regulation and oversight of the profession;
 - b) proposes what the Task Force should seek to address and how; and
 - c) outlines the organizational framework for the Task Force, including:
 - (i) size and composition;
 - (ii) a research/consultation process;
 - (iii) time lines for the Task Force; and
 - (iv) funding/budgetary issues.

C. CONTEXT FOR THE TASK FORCE'S MANDATE

The Law Society's Role Statement

8. The Society's Role Statement states that the Law Society "exists to govern the legal profession in the public interest by ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence, and professional conduct". The Commentary, beginning with the concept of governance, is instructive, and states:

Governance...can be a useful limiting concept. We can ask in respect of every program and activity of the Law Society (actual or proposed): "Does it qualify as governance of the profession?" or "Is it an essential function of governing the profession?"

...

The concept that the Society must govern its members in the public interest is inseparable from the idea that one of the distinguishing features of a profession is that it exists to put its specialist skills at the service of the public. The obligation is more compelling where the public has given the profession a monopoly on the delivery of those services... The governing body of the legal profession therefore has a responsibility to ensure that members of the public have access to legal services and know how to avail themselves of those services. (emphasis added)

...

As with the duty to uphold the independence of the profession, so with the duty to uphold its integrity and honour: it is grounded in the public interest...

...

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

...

- the power to prescribe the financial books, records and accounts to be maintained by members who practise, and the power to examine and audit those records;

- the duty to investigate complaints of professional misconduct or conduct unbecoming a barrister and solicitor;

...

- the power to impose disciplinary sanctions (up to and including disbarment and cancellation of membership) on members guilty of professional misconduct or conduct unbecoming; and

- the power to maintain a fund to be used to compensate clients and beneficiaries of trusts who have suffered loss as a result of a lawyer's dishonesty.

9. The challenge to the Law Society flowing from the above is how that statement of governance policies finds expression in what is hoped to be a far-reaching study of future directions for the profession.
10. Access to legal services includes, among other things, lawyers delivering appropriate, affordable services and members of the public being informed of such services. Lawyers maintaining a proper competitive balance is also an aspect of access to legal services.

D. HOW THE TASK FORCE SHOULD PROCEED

Working Group Consensus on Framework for Terms of Reference

11. Keeping in mind that the Task Force should have some freedom to develop the details of its terms of reference, the working group has developed the following proposal.
12. The focus of the Task Force will be "future" issues concerning the practice of law. As the practice of law evolves, worldwide, the Law Society's rules and regulations should not unnecessarily impede the creative practice of law but must at the same time maintain a level of regulation and safety which protects the public. Similarly, there may be areas where it is in the public interest to assist lawyers through re-training, skills updating or emerging fields to ensure there is access to qualified, skilled professionals.

13. To best understand how to achieve these overall objectives, the Task Force should conduct worldwide research of existing literature (for example the American Bar Association, The Law Society of New South Wales and Le Barreau du Quebec have all studied similar topics recently) and decide upon discrete topics to review from the regulatory perspective outlined above. Initial discussion by the working group disclosed two topics readily identifiable as requiring immediate investigation and discussion: multi-disciplinary law firms and the impact of technological advances by governments and financial institutions on the practice of law.
14. In addition to these two discrete topics, which are to be examined by Working Groups as outlined below, the Task Force itself will examine the broader question of what issues, opportunities and challenges exist for lawyers and therefore for regulators and insurers in the near future. The essential question is where is the practice of law headed and what are the implications?
15. The Task Force will therefore initially dedicate its study to two defined areas:
 - multi-disciplinary practice and the multi-disciplinary law firm, primarily from the regulatory viewpoint¹;
 - technology and electronic registration and electronic dissemination of information, which may include court and litigation processes and conveyancing systems and how their arrival affects the practice of law.
16. A third area, encompassing trends in legal practice and the broad topic of the future of the profession, will receive definition of its scope by the Task Force before a study of individual subjects within the area begins. Preliminary research will begin immediately to help refine the scope of the broad topic so that other discrete issues may be examined.
17. The Task Force will appoint two Working Groups to conduct in depth study of the two areas noted above. The Working Groups will be responsible for:
 - determining their precise research requirements and/or the need for consultants in the area;
 - directing staff research or engaging researchers and/or consultants with expertise in the areas to facilitate an aggressive research phase for a period not exceeding three months;
 - establishing a consultation process with appropriate groups in the profession and other professions as required;
 - providing regular (perhaps monthly) reports to Convocation through the Task Force itself.

E. ORGANIZATIONAL FRAMEWORK FOR THE TASK FORCE

Size and Make Up of The Task Force and Its Working Groups

18. The Treasurer has confirmed the initial standing membership of the Task Force to be:

¹This was felt to be the most pressing policy area for analysis. The Task Force proposes that the implications for the profession and the Law Society of multi-disciplinary partnerships should be examined as soon as possible and implementation issues/solutions identified.

4th April, 1997

The Treasurer (Susan Elliott)
Robert Armstrong
Ron Manes
Harvey Strosberg
Two additional benchers volunteers

Robert Aaron
Mary Eberts
David Scott
An LPIC Nominee²

19. As the work of the Task Force is further defined and progresses, other benchers or non-bencher lawyers and members of the public, as the case may be, will be invited to participate either as Working Group members or on a consultation basis. Thus, the membership of the Task Force is not exclusive, but will be driven, it is anticipated, by the issues to be addressed. It is envisioned that different issues will be amenable to different configurations of Working Groups and consultations.
20. It is proposed that the membership of each Working Group of the Task Force consist of two or three benchers (including any LPIC nominee), any appropriate non-bencher lawyers, and designated Law Society staff.³
21. The relatively small size is recommended so that meetings, to be scheduled by the Working Groups, will be manageable and each member can be expected to take responsibility for aspects of the work. The members will not be considered an advisory group, but will be actively involved in assessing the materials and making proposals to the Task Force.
22. It is further proposed that the views of the various groups that have an interest in the Task Force's studies should be heard and considered through a consultation process, rather than through membership on the Task Force.
23. The Working Groups, in conjunction with the Task Force, should themselves develop a proposal respecting consultation on the individual topics.
24. Working Groups will report to and through the Task Force which will be responsible for overseeing the number and nature of discrete issues being examined at any one time on behalf of Convocation. All reports, interim and final, will be made to Convocation and will require the adoption of Convocation to be binding.
25. Future topics for examination by Working Groups will be determined by the Task Force and will require the approval of Convocation in order to proceed.

Time Lines

26. It is proposed that the Task Force be given until the end of the term of the current bench, in the spring of 1999, to conclude its work and prepare a final report on the work of the Task Force to Convocation. The Working Groups will work for required time periods within that general time frame and report as topics are completed.

²As LPIC funding, discussed later in this report, is being offered, an accommodation in this way is being made for the proposed membership of the Working Groups.

³The Multi-Disciplinary Working Group has been struck and is comprised of benchers David Scott and Robert Armstrong, lawyer J. Rob Collins, staff members Stephen Traviss and Jim Varro and an LPIC nominee to be chosen. The Technology Working Group to date includes the Treasurer, who will be choosing other members and staff.

Funding/Budgetary Issues

27. The terms of reference working group discussed the budgetary needs of the research phase of the Task Force Working Groups. It anticipates that the costs will be limited to hiring appropriate research personnel or consultants to assist in assembling relevant data or information or providing expert advice for the Working Groups' consideration.
28. To that end, given LPIC's interest in and the relevance to its jurisdiction of the issues to be studied by the two Working Groups and more specifically, its recent and continuing technological initiatives, funding for the hiring of researchers and/or consultants for the two Working Groups has been requested of LPIC.⁴
29. While some members of the Task Force are from outside Toronto, it is anticipated that a number of meetings may be conducted by teleconference, which will assist in reducing bench costs.
30. Other than that discussed above, no immediate new staff resources are contemplated, as essential support staff to the Task Force will come from Law Society departments.

Information to the Profession

31. The working group proposes that the work of the Task Force be publicized in the *Ontario Lawyers' Gazette* by way of general announcement to the profession. It is also hoped that through this publication process other topics for review may be identified.

Convocation's Consideration of the Terms of Reference

32. The working group proposes, with respect to the terms of reference, and the first two detailed topics to be reviewed, that Convocation:
 - a) determine whether they reflect an appropriate framework for the Futures Task Force; and
 - b) determine whether it wishes to provide any further direction......

Mr. Gottlieb asked that the Task Force look at what could be done to assist and preserve the continued existence of the sole practitioner in this province and that research be done on the numbers issue.

⁴The Task Force concluded that dedicated staffing for its work was essential. As the question of what services are insured through LPIC connects the background/research work to part of LPIC's mandate, it was suggested that funding come from LPIC and that the research phase be assisted by individuals hired to work on the Working Group's projects. The funding is subject to LPIC Board approval, and is on the agenda of the Board's April 2, 1997 meeting. The proposal is to provide up to \$50,000.00 to each of the first two Working Groups and to the general topic group, once it is refined.

It was moved by Mr. Strosberg, seconded by Mr. Banack that a member of LPIC be added to the composition of the Multi-Disciplinary working group and that the generic terms of reference be approved and the following 2 areas be reviewed:

- multi-disciplinary practice and the multi-disciplinary law firm; and
- technology and electronic registration and electronic dissemination of information.

Carried

PROFESSIONAL REGULATION COMMITTEE REPORT (deferred from February Convocation)

Ms. Curtis presented the Committee's proposal for a policy on the attendance of lawyers to receive reprimands.

Professional Regulation Committee
February 13, 1997¹

REPORT TO CONVOCATION

Purpose of Report: Decision-Making

Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on February 13, 1997. In attendance were:
 - Carole Curtis (Chair)
 - Neil Finkelstein (Vice-Chair)
 - Paul Copeland
 - Gavin MacKenzie
 - Clayton Ruby

¹Matters deferred from February 28, 1997 Convocation.

4th April, 1997

Niels Ortved
Hope Sealy
Stuart Thom

Susan Elliott, Treasurer

Staff: Janet Brooks, Margot Devlin, Georgette Gagnon, Malcolm Heins, Maurizio Romanin, Glenn Stuart, Stephen Traviss, Jim Varro, Kathleen Waters, Sheena Weir and Jim Yakimovich

2. This report contains the Committee's proposal for a policy on the attendance of lawyers to receive reprimands.

REPRIMANDS WHEN THE LAWYER IS NOT IN ATTENDANCE

A. NATURE AND SCOPE OF THE ISSUE

How the Issue Arose/Current Request for Input

3. In April 1996, Convocation decided to issue a reprimand to a lawyer as a penalty for misconduct. The lawyer was charged with and found guilty of failing to file his Form 2 for 1994. The lawyer was permanently out of the jurisdiction (in Vancouver) and advised that he did not intend to return at a future Convocation for the reprimand. Accordingly, Convocation referred the matter to the Discipline Policy Committee for consideration of the issue of the authority to issue a reprimand in the absence of the lawyer. The issue was not reached by that Committee and was one of the items "rolled over" to the Professional Regulation Committee ("the Committee").
4. The above discipline case was before Discipline Convocation again on November 28, 1996, at which time it confirmed that it would await review of the matter through the Committee, on the basis that Convocation is "committed to developing a policy on it"² given its recurrence before Convocation.
5. The two questions for the Committee were
 - i. What should Convocation's policy be respecting reprimands when the lawyer is not before Convocation?
 - ii. What issues should be considered in formulating the policy?
6. To answer the above questions, information was provided on the purpose of the penalty of reprimand and what is it intended to address by way of sanction. Although the issue is framed in terms of a reprimand before Convocation, it was recognized that similar situations could present themselves at the Discipline Committee level.

²Treasurer's remarks from transcript of Discipline Convocation, November 28, 1996.

B. BACKGROUND

Statutory Provisions/Current Practice

7. There would not appear to be a statutory impediment to reprimanding a lawyer in his or her absence³. Hearings may be conducted in the absence of the lawyer.⁴ While the lawyer is sent a notice of the proceeding before Convocation (if the recommended penalty is anything other than a reprimand in Committee), the fact of the lawyer's failure or refusal to attend has not to date been the subject of a separate proceeding.⁵
8. If the matter can proceed in Convocation in the absence of the lawyer and issuing a penalty is part of that process, it follows that Convocation has jurisdiction to make whatever order in that respect it deems appropriate. That could include requiring or not requiring that a lawyer attend for the reprimand, or attaching conditions to the disposition of the matter for the purpose of penalty.
9. The practice before Discipline Convocation has always been to issue the reprimand in the presence of the lawyer.
10. Society's discipline counsel, who provided helpful information on this subject, have advised that the Society has in the rare case held portions of discipline hearings by telephone⁶. The provisions of the *Statutory Powers Procedures Act* which permit electronic hearings were also noted, including those which allow the tribunal to consider prejudice to a party to the proceeding if it proceeds electronically and the authority to act to prevent abuses of the process generally.⁷

Law Society Discipline Cases Relevant to the Issue

11. In at least two discipline cases, the lawyers did not attend before Convocation and were ordered reprimanded. Because they did not attend for the reprimands, they were suspended until such time as they attend for the reprimands in Convocation.
12. In another case, a lawyer received a reprimand in Committee by telephone, a rare circumstance which occurred after continuation of a hearing following an adjournment to allow the lawyer to complete his filings. The conclusion of the hearing took place with all panel members and the solicitor on a conference call, with a reporter present.

³See the Appendix to this report for the relevant statutory provisions, especially s. 34 of the *Law Society Act*, which gives to Convocation a discretionary power to "make such other disposition as it considers proper...". The current legislative reform package recommends amendments which would allow a reprimand to be provided in writing.

⁴Discipline counsel, however, consistently make the submission that failure to attend the hearing without explanation warrants a finding of ungovernability.

⁵Regulation 708, s. 9(8)(b) (see Appendix) includes a summons requiring a lawyer to attend at Convocation.

⁶These cases involved agreed statements of fact and a recommendation for a joint submission for a penalty in Convocation (*not* a reprimand in Committee).

⁷See the Appendix for these provisions.

13. In one case before a Discipline Committee where the solicitor did not attend, the Committee decided to issue a reprimand on the record and ordered that a transcript of the reprimand be sent to the lawyer by mail. It was returned by Canada Post unopened and the Society to date has not been able to locate the lawyer. *Quaere* whether a reprimand given to a solicitor in his or her absence is a penalty.
14. Although out of the strict discipline realm, Invitations to Attend have been held by telephone on at least three occasions. The decision to use this method emanated from a discussion among the Chair and Vice-Chairs of the Discipline Committee in early 1995 who decided that the procedure would be appropriate where the lawyer primarily was geographically remote from the Society's offices.

Other Jurisdictions

15. Several other Law Societies in Canada were canvassed on their policy or procedure respecting reprimands, although the type of case or seriousness of the conduct was not discussed:
 - Manitoba and Saskatchewan - both will reprimand in the absence of the lawyer, although neither has a stated policy on the issue
 - Nova Scotia - does not provide for an equivalent penalty to Ontario's reprimand, but as a matter of practice the lawyer must be present to receive a disciplinary penalty
 - Alberta - although there is no stated policy, a penalty, including a reprimand, would not be imposed in the absence of the lawyer⁸
16. It should also be remembered that the volume of discipline cases in Ontario is much greater than that in any of the above jurisdictions.

C. POLICY OBJECTIVES

17. It would appear that there are two conceivable objectives to deciding whether to allow reprimands in the absence of the lawyer, and stating a policy to prescribe or assist in prescribing the circumstances in which they will be allowed:
 - i. to ensure that, whatever decision is made, the Society continues to fulfill its regulatory role in exercising its disciplinary authority appropriately and in the public interest;
 - ii. to address an issue for the lawyers charged concerning an ability to forego attendance at the Law Society for any number of reasons.
18. The public interest is the focus of the governance principle upon which the obligation to discipline for misconduct or conduct unbecoming a barrister and solicitor rests, and the Law Society accepts that

The purpose of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.⁹

⁸The exception would be where the lawyer has refused to attend the hearing and the matter has proceeded in the lawyer's absence.

⁹Gavin Mackenzie, *Lawyers and Ethics - Professional Responsibility and Discipline* (Toronto: Carswell, 1993) p. 26 - 1.

19. A similar view is expressed in the ABA Standards on lawyer sanctions¹⁰, where it is recognized that the primary purpose of sanctions is to protect the public. Another purpose is to deter further unethical conduct and where appropriate, to rehabilitate the lawyer. Although it is noted that sanctions have a punitive aspect, it is not the purpose to impose sanctions for punishment.
20. The ABA also recognized that the more the public knows about how effectively the disciplinary system works, the more confidence they will have in that system¹¹.
21. The following description of the penalty of reprimand from the ABA Standards is instructive:

Reprimand, also known as censure or public censure, is a form of public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

Commentary

...A reprimand is appropriate in cases where the lawyer's conduct, although violating ethical standards, is not serious enough to warrant suspension or disbarment. ... A reprimand serves the useful purpose of identifying lawyers who have violated ethical standards, and, if accompanied by a published opinion, educates members of the bar as to these standards.¹²

22. The English Court of Appeal has provided insightful commentary on the nature of disciplinary proceedings and penalty in particular. In the *Bolton* case¹³, concerning the suspension of a lawyer for misconduct, the court said:

There is, in some of these [disciplinary] orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. ... But often the order is not punitive. ... In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. ... The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing may be trusted to the ends of the earth.

...

¹⁰*Selected Statutes, Rules and Standards on the Legal Profession*, 1987 Edition, p. 288.

¹¹*Idem*, p. 289.

¹²*Idem*, p. 295-296.

¹³*Bolton v. Law Society* [1994] W.L.R. 512, C.A.

...the essential issue...is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. ... The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price.

D. OPTIONS ANALYSIS

Provisions of the Role Statement

23. Of relevance to this discussion are the following sections of the Society's Role Statement:

1.2 *The concept of governance (the act, office or function of governing - of exercising authority) is central to the role of the Law Society. It conveys the idea that the Society has authority over its members (but always and only in the public interest). The responsibility of governance is the principle which legitimizes the authority which the Society exercises over its members, and prospective members, in respect of entry to the profession, standards, insurance requirements, professional conduct and discipline.*

2.6 *The duty to govern in the public interest implies a responsibility to ensure that members of the public may inform themselves as to the manner in which that duty is being discharged. It is therefore important that the Law Society continue conducting its proceedings in public and communicating its decisions not only to the profession but also to the public. Such openness is important for the Law Society in carrying out its duties as a democratic institution.*

3.1 *It is sometimes assumed that the public interest must necessarily be opposed to the interest of the profession and that, in fulfilment of its duty to govern in the public interest, the Law Society can give no consideration to the interest of the profession. This is not so. Ideally, what is in the public interest will also be in the interest of the profession. It is only when the two interests conflict that the Law Society must subordinate the interest of the profession to that of the public.*

Policy Discussion

24. In deciding on a policy, the Committee noted a range of approaches that Convocation may wish to consider. Three possible options are:

- a. Convocation could decide that no reprimands will be issued at Convocation, and thus the matter not disposed of, until the lawyer in question appears before Convocation. This would mean, as in the two cases referred to above, that the lawyer would have some penalty visited upon him or her (ie. a suspension) until attending to receive the reprimand.
- b. Convocation could take the above position but make rare exceptions for certain lawyers in certain narrow situations. The lawyer in question may be expected to satisfy the onus of showing why his or her attendance should not be required before the matter is disposed of by imposition of the reprimand. The following are examples:

- if finances of the lawyer were in issue, the ability of the lawyer to satisfy Convocation of the seriousness of the financial hardship in attending at the Society;
- filing a medical certificate (through a third party if necessary) if health issues were given as the reason for not attending;
- the lawyer residing out of the jurisdiction and having no intention of returning.

The following may also be considered:

- the nature of the discipline charge, in combination with other factors mentioned here. For example, if the lawyer is charged with failing to file and completes the filings before the discipline matter is concluded, this may not only affect the penalty but how it is administered;
 - the ability of the Society to effectively arrange the imposition of the penalty by a means other than the lawyer's attendance before Convocation.¹⁴ For example, if the lawyer were practising law in another jurisdiction, arrangements may be made with the Law Society for that jurisdiction to arrange a time and place for receipt, perhaps electronically, of the reprimand;
 - the attitude of the lawyer¹⁵
- c. Convocation could decide on a case by case basis whether or not it will require a lawyer who has indicated an unwillingness or inability to attend to appear for the reprimand, as a function of its discretion in deciding the matter, and develop guidelines for that purpose.

25. The S.O.A.R. Sample Rules of Practice¹⁶ drafted pursuant to s. 25.1 of the *Statutory Powers Procedure Act* include a useful section on electronic hearings and "relevant factors" to be considered by the tribunal, including:
- the convenience of the parties;
 - the cost, efficiency and timeliness of proceedings;
 - avoidance of unnecessary length or delay;
 - ensuring a fair and understandable process;
 - the desirability or necessity of public participation or public access to the tribunal's process;
 - fulfilment of the tribunal's statutory mandate.
26. The following factors, some of which expand on the above, may influence the manner in which the policy is decided.

¹⁴How to issue a reprimand, electronically or otherwise, in circumstances where the lawyer does not attend is a decision that perhaps cannot be made until discipline counsel's advice to Convocation on the issues relevant to reprimands and the propriety of the penalty is provided. It becomes part of the question of the efficacy of the system in addressing matters in the public interest.

¹⁵Although this may be a subjective measurement, and it is accepted that there is no issue of ungovernability when a reprimand is decided as the appropriate penalty, there may be some merit to requiring some lawyers to attend, notwithstanding their protestations, to receive a reprimand to ensure that the most effective and appropriate disposition of the case has been made.

¹⁶Society of Ontario Adjudicators and Regulators. These rules have not been adopted by the Law Society.

27. Delivery of the Reprimand

A reprimand can often involve not only statements from members of a discipline panel or Convocation, but questions asked of the lawyer and statements made by the lawyer in response. If the reprimand is delivered other than in person, how effective would this exchange be as a function of administering the penalty?

The Public Perception

28. There can be a high degree of interest on the part of the public in the disposition of a discipline matter, particularly on the part of a complainant who has monitored the progress of the Society's investigation and prosecution of a lawyer. These individuals may actually attend to witness the reprimand. The questions are whether justice, in the form of an appropriate sanction and appropriate delivery of the sanction to the lawyer, is done or seen to be done when a lawyer does not appear to receive a reprimand, and whether there is certainty in the public's eyes that the Society has authority over the lawyer and the lawyer is submitting to the Society's authority.

The Effect on the Law Society

29. As indicated above, the efficacy of the Society's governance role through the discipline process is relevant to this issue. The Society must be assured that through its processes, especially the disciplinary function which is accessible to and open to scrutiny by the public, it is meeting its obligations to govern in the public interest. Reference has already been made to the Role Statement and the requirements it establishes. Would the effectiveness of the Society's governance role be lessened if it did not require the member to attend for a reprimand?

The Effect on the Lawyer

30. If it is accepted that the penalty of a reprimand by its nature is most effectively given to a lawyer in person, the impact of that penalty may be lost if the lawyer does not attend to receive it. Further, in some cases, a reprimand is issued in situations where, but for notable mitigating circumstances or where it is a first "offence", a harsher penalty would have been given. It may be crucial to the Society's exercise of its governance authority and the lawyer's appreciation and acknowledgement of that authority together with the leniency that is being exhibited, that he or she be present before Convocation to receive the reprimand.

31. Refusal to Attend

Where a member is capable of attending at the Society but will not attend, or has expressed the desire not to attend in terms of simple inconvenience, it may be difficult to justify proceeding with a reprimand without further consideration of the circumstances. The cases referred to above illustrate two situations where the Society was prepared to impose another sanction on a lawyer (a suspension) where a refusal to attend for a reprimand was either expressed or was apparent.

Convenience to the Lawyer

32. There may be situations where it may be impractical, from the lawyer's perspective, to attend at the Law Society to receive a reprimand in person. For example:

- (a) Financial Issues
If the lawyer is out of the jurisdiction and has no intention of returning, to practice law or otherwise, it is arguable that requiring a lawyer to attend is in effect an additional penalty, largely financial, to that which he or she will receive. The difficulty in deciding when this might happen arises when an attempt is made to determine what is an unreasonable distance, for example, for a lawyer to travel to attend at the Society. Would Northern Ontario qualify, or would it have to be a location on the other side or off of the continent?
- (b) Health Problems
While a lawyer may not be suffering from a debilitating illness to the extent that he or she is immobilized, but it would require some effort to attend at the Society, the question is whether this would be a circumstance to be considered in allowing the reprimand to issue without the lawyer's attendance.

The Committee's View

33. After considering the above information, the Committee felt that in the rare circumstance where the issue of the lawyers' attendance to receive a reprimand arises, the lawyer must attend unless *compelling* circumstances as explained by the lawyer dictate otherwise. Accordingly, the Committee endorsed **option b.** as described below.
34. All options, however, are provided for Convocation's review.

Options and Alternatives for Decision by Convocation

35. The Committee considered the following options and alternatives in its discussion on the appropriate policy of Convocation:
- a. A lawyer must attend before Convocation or the Discipline Committee ("Committee") to receive a reprimand, failing which the lawyer will be suspended until he or she so attends;
or
 - b. A lawyer must attend before Convocation or Committee to receive a reprimand, failing which the lawyer will be suspended until he or she so attends, *unless* there are compelling circumstances which would dictate otherwise. The onus rests with the lawyer to satisfy Convocation or Committee respecting the merits of those circumstances before the lawyer is permitted to receive the reprimand other than by attending at Convocation or Committee;
or
 - c. A lawyer must attend before Convocation or Committee to receive a reprimand, failing which the lawyer will be suspended until he or she so attends, unless there are compelling circumstances which would dictate otherwise (with the onus requirement as in b. above), *provided* that the reprimand can be *effectively* administered to the lawyer, as determined by Convocation or Committee, without requiring the lawyer's attendance;
or
 - d. Convocation in its discretion may decide on a case by case basis whether or not a lawyer must attend before it to receive a reprimand and thereby conclude a disciplinary proceeding, where the attendance has been made an issue by the lawyer. For these purposes, discretionary guidelines should be developed for use by Convocation and Committee.

APPENDIX

STATUTORY/REGULATORY PROVISIONS

Law Society Act

- s. 33(3) If the person whose conduct is being investigated fails to appear in answer to the notice at the time and place appointed, the hearing may be conducted in the person's absence.
- s. 34 If a member is found guilty of professional misconduct or of conduct unbecoming a barrister and solicitor after due investigation by a committee of Convocation, Convocation may by order cancel membership in the Society by disbarring the member as a barrister and striking the member's name off the roll of solicitor or may by order suspend the member's rights and privileges as a member for a period to be named or may by order reprimand the member or may by order make such other disposition as it considers proper in the circumstances.
- s. 63 ¶1 Subject to the approval of the Lieutenant Governor in Council, Convocation may make regulations respecting any matter that is outside the scope of the rule-making powers specified in section 62, and, without, limiting the generality of the foregoing,
1. Respecting any matter ancillary to the provisions of this Act with regard to the admission, conduct and discipline of members and student members or any class of either of them and the suspension and restoration of their rights and privileges, the cancellation of memberships and student memberships, the resignation of members, and the readmission of former members and student members;

Regulation 708

- s. 9(7) Where at the conclusion of the hearing of a complaint or amended complaint against a member, such complaint or amended complaint has been established to the satisfaction of the Committee and the Committee has not by order reprimanded the member, the Committee shall report in writing to Convocation setting forth a summary of the evidence at the hearing, its findings of fact and conclusions of law, if any, based thereon and its recommendations as to the action to be taken by Convocation on the complaint.
- s. 9(8) The Secretary shall,
- (a) prepare the report referred to in subsection (7) for approval by the Committee, and the Committee's approval shall be evidence by the signature thereto of 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; and
 - (b) serve upon the member whose conduct is being investigated a copy of the report as so approved, a notice of the time and place of the Convocation that will consider the report, a summons requiring the member to attend thereat and a notice substantially as follows:

"If you intend to dispute any statement of fact or finding of fact contained in the attached report of the Discipline Committee at the time of its consideration by Convocation, you are required to file with the Secretary not later than the day preceding Convocation a written statement setting forth any such statement of fact or finding of fact that you intend to dispute".

Statutory Powers Procedures Act

- s. 5.2 (1) A tribunal may hold an electronic hearing in a proceeding, in accordance with its rules made under section 25.1.
- (2) The tribunal shall not hold an electronic hearing if a party satisfies the tribunal that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.
- s. 6(5) A notice of an electronic hearing shall include,
- (a) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;
- (b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
- (c) if clause (b) does not apply, a statement that the party notified may, by satisfying the tribunal that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the tribunal to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose; and
- (d) a statement that if the party notified neither acts under clause (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.
- s. 7(3) Where notice of an electronic hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6(5)(c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.
- s. 9 (1.2) An electronic hearing need not be open to the public.
- (2) A tribunal may make such orders or give such directions at an oral or electronic hearing as it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any such order or direction, the tribunal or a member there may call for the assistance of any peace officer to enforce the order or direction, and every peace officer so called upon shall take such action as is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.

- s. 18 (1) The tribunal shall send each party who participated in the proceeding, or the party's counsel or agent, a copy of its final decision or order, including the reasons if any have been given,
 - (a) by regular mail;
 - (b) by electronic transmission;
 - (c) by telephone transmission of a facsimile; or
 - (d) by some other method that allows proof of receipt, in accordance with the tribunal's rules made under section 25.1.
- (3) If the copy is sent by electronic transmission or by telephone transmission of a facsimile, it shall be deemed to be received on the day after it was sent, unless that day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday.

s.23(1) A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.

.....

It was moved by Mr. MacKenzie, seconded by Mr. Gottlieb that option 35.(b) (page 13 of the report) be adopted.

"b. A lawyer must attend before Convocation or Committee to receive a reprimand, failing which the lawyer will be suspended until he or she so attends, unless there are compelling circumstances which would dictate otherwise. The onus rests with the lawyer to satisfy Convocation or Committee respecting the merits of those circumstances before the lawyer is permitted to receive the reprimand other than by attending at Convocation or Committee."

Carried

It was moved by Mr. Scott, seconded by Mr. Wright that option (b) be amended by adding the word "exceptional" to read "exceptional and compelling circumstances".

Not Put

It was moved by Mr. Adams, seconded by Ms. Cronk that option (b) be amended by deleting the word "compelling" and inserting the word "exceptional".

Not Put

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT (deferred from February Convocation)

Mr. Banack presented the policy proposal relating to interim options for specialist certification matters.

Professional Development and Competence Committee
February 13, 1997¹

REPORT TO CONVOCATION

Nature of Report: Policy and Information

Policy Secretariat

TABLE OF CONTENTS

SPECIALIST CERTIFICATION - INTERIM OPTIONS.....2 - 5

SPECIALIST CERTIFICATION - REPORT OF COMMITTEE.....5 - 7

TERMS OF REFERENCE/COMMITTEE PROCESS

The Professional Development and Competence Committee ("the Committee") met on February 13, 1997. In attendance were Eleanore Cronk (Vice-Chair), Larry Banack (Vice Chair), Susan Elliott (Treasurer), Michael Adams, Brendan O'Brien, Ronald Cass, Kim Carpenter-Gunn, Mary Eberts, Donald Lamont, Shirley O'Connor, Helene Puccini, David Scott, with staff members Wayne Mowat, Alan Treleaven, Carol Austin, Katherine Corrick, Sue McCaffrey, Janine Miller, Paul Truster and Susan Binnie.

1. The Committee is reporting on two matters.
 - Interim options for specialist certification matters.
 - The Committee's actions regarding specialist certification applications.

2. This report contains:
 - a policy proposal in relation to an interim or transitional process for specialist certification matters.
 - an information report on the specialist certification applications reviewed in Committee on 13 February, 1997.

POLICY PROPOSAL IN RELATION TO AN INTERIM TRANSITIONAL PROCESS FOR SPECIALIST CERTIFICATION MATTERS

BACKGROUND:

3. The former Specialist Certification Board was a Standing Committee of Convocation under Rule 27 under the *Law Society Act*. Under Rule 46C, the Board was responsible to Convocation for "... the development and implementation of the policies and procedures of certifying members as specialists." Subject to the approval of Convocation, the Board could "make such arrangements and take such steps as it considers advisable to carry out its responsibilities."

¹Matter deferred from February 28, 1997 Convocation

4. As a result of the implementation of the Policy Governance model, the Standing Committees of the Law Society including the Specialist Certification Board were abolished by Convocation on 27 September, 1996. Responsibility for specialist certification passed to the Professional Development and Competence Committee. The Specialist Certification Program is not referred to under the current *Law Society Act* or under the proposed amendments to the *Law Society Act*.
5. All transitional issues during the Law Society governance restructuring process have been assigned for review to the Governance Restructuring Implementation Task Force. While recognising that the absence of a body responsible for specialist certification is a transitional issue, the Professional Development and Competence Committee has found it necessary to develop a policy to address a backlog of work previously undertaken by the Specialist Certification Board. At the Chair's request, the Administrator of the Specialist Certification Program reported to the Committee on 13 February, 1997 (attachment A1-A4).
6. The Committee considered a number of possible *interim* solutions for specialist certification matters requiring action and the Chair subsequently solicited Andrew Brockett's opinion (attachment B1). Five options are presented and the Committee asks Convocation to adopt one of the options until such time as a policy for a permanent replacement process has been developed for the area of specialist certification. Because the options are put forward by the Committee as temporary measures, none of the proposals suggests any modification to the existing program.
7. The options are outlined as follows:
 - A. Convocation could decide to reconstitute the old Specialist Certification Board on a temporary basis;
 - B. Convocation could delegate powers in relation to specialist certification to the Chief Executive Officer with a requirement to report to Convocation;
 - C. Convocation could exercise powers in relation to specialist certification directly;
 - D. Convocation could delegate responsibility for specialist certification to a committee of benchers who would make a recommendation in every case. Convocation would retain the final power to grant or deny certification.
 - E. Convocation could delegate powers in relation to specialist certification to a committee of benchers; there could be a reporting requirement to Convocation.
8. In Committee, support for Option A was limited. The view expressed by the Governance Restructuring Implementation Task Force, namely that reviving a defunct Committee was not an appropriate solution, was received and noted.
9. There was a strong consensus in Committee that specialists in the current Specialist Certification Program are certified by the Law Society and that benchers must therefore be directly involved in, and Convocation ultimately responsible for, matters relating to specialist certification. As a result, Option B, the delegation of powers to the CEO and staff, was not accepted as an interim solution.
10. Options C and D were considered relatively onerous as Convocation, rather than a committee, would consider either *all* applications (under Option C) or certain complex cases including, possibly, requests for reviews of committee decisions (under Option D).

4th April, 1997

11. Committee members unanimously preferred Option E, that the Professional Development and Competence Committee take full responsibility for specialist certification matters until a permanent replacement process for the Specialist Certification Board has been established.
12. Given a backlog of specialist certification matters, the Committee resolved to reconvene later the same day to address urgent matters relating to the Specialist Certification Program.

RECOMMENDATION

13. The Professional Development and Competence Committee asks Convocation to review the options listed in Item 7 above. The Committee recommends that Convocation adopt Option E, namely the delegation of powers previously devolving on the Specialist Certification Board to the Professional Development and Competence Committee, on an interim basis.
14. If Convocation adopts the Committee's interim solution, the Committee asks whether certification decisions under powers delegated by Convocation should be reported routinely to Convocation.
15. In the event that Convocation approves Option E and requires a periodic report by the Committee to Convocation, the Committee requests Convocation to approve the following report, from the Professional Development and Competence Committee meeting on 13 February, 1997, as fulfilling this requirement.

INFORMATION REPORT ON SPECIALIST CERTIFICATION APPLICATIONS AND RECERTIFICATIONS APPROVED IN COMMITTEE ON 13 FEBRUARY, 1997.

16. The Professional Development and Competence Committee is pleased to report the certification of the following lawyers:

Bankruptcy & Insolvency Law:

Richard Howell (of Toronto)

Civil Litigation:

Michael Boland (of Whitby)
Gary Bonney (of Timmins)
Peter Greene (of Toronto)
Peter Heisey (of Toronto)

Criminal Law:

John Payne (of Oshawa)

Environmental Law:

Todd Archibald (of Toronto)
James Harbell (of Toronto)
Mark Madras (of Toronto)
John Tidball (of Markham)

Family Law:

Robert Snyder (of Kitchener)

Labour Law:

Frederick Bickford (of Thunder Bay)
James Fyshe (of Toronto)

4th April, 1997

Workers' Compensation Law:

Perry McCuaig (of Ottawa)
Loretta Stoyka (of Windsor)

The Professional Development and Competence Committee is pleased to report the recertification for an additional five years of the following lawyers:

Civil Litigation:

Milton Davis (of Toronto)
Bruce Drake (of Toronto)
Barry Fisher (of Toronto)
Dana Fuller (of Toronto)
Joseph Henderson (of St. Catharines)
R. Scott Jolliffe (of Toronto)
Ian Kirby (of Toronto)
Larry Levine (of Toronto)
Donald MacOdrum (of Toronto)
Thomas McDougall (of Ottawa)
Wilfrid Menninga (of Belleville)
Robert Munroe (of Hamilton)
Leah Price (of Toronto)
Joel Richler (of Toronto)
Robert Seiler (of Oshawa)
Jeffrey Strype (of Toronto)
Rod Thibodeau (of Don Mills)
David Wakely (of Toronto)

Criminal Law:

Frederick Campling (of Hamilton)
Douglas C. Hunt (of Toronto)
Peter Kemp (of Kingston)
Peter Zaduk (of Toronto)

Family Law:

G. Ross Davis (of Toronto)
Matti Mottonen (of Sudbury)

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

- (a) Copy of a memo from Ms. Carol Austin, Administrator Specialist Certification Program to The Professional Development & Competence Committee dated March 5, 1997 re: Discussion of Options for Specialist Certification Board.

(Attachment A1 - A4)

- (b) Copy of a memo from Mr. Andrew Brockett to Mr. Derry Millar dated February 17, 1997 re: Specialist Certification.

(Attachment B1)

It was moved by Mr. Banack, seconded by Ms. Cronk that recommendations 13. through 16. (pages 5 to 7) of the Report be adopted, that Convocation delegate powers for specialist certification to the Professional Development and Competence Committee on an interim basis who would routinely report to Convocation.

Carried

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Mr. Banack presented for informational purposes the follow-up to the Report on "Post-Call Learning for Lawyers".

Professional Development and Competence Committee
March 13, 1997

REPORT TO CONVOCATION

Nature of Report: Information

Policy Secretariat

TABLE OF CONTENTS

WORKING GROUP ON POST-CALL LEARNING FOR LAWYERS..... 2 - 4

TERMS OF REFERENCE/COMMITTEE PROCESS

The Professional Development and Competence Committee ("the Committee") met on March 13, 1997. In attendance were Derry Millar (Chair), Larry Banack (Vice Chair), Susan Elliott (Treasurer), Michael Adams, Robert Aaron, Donald Lamont, Helene Puccini and David Scott, with staff members Alan Treleaven, Hershel Gross, Janine Miller, Mary Shena, Paul Truster and Susan Binnie.

1. The Committee is reporting on one matter
 - the follow-up to the Report "Post-Call Learning for Lawyers"
2. This report contains:
 - a report of a working group established to fulfill an action plan for implementation of measures in relation to initiatives for post-call learning

REPORT OF A WORKING GROUP ESTABLISHED TO FULFILL AN ACTION PLAN FOR IMPLEMENTATION OF THE REPORT, "POST-CALL LEARNING FOR LAWYERS"

BACKGROUND:

3. In response to the Report and Recommendations of the Mandatory Continuing Legal Education Subcommittee entitled *Post-Call Learning for Lawyers* ("the Report"), Convocation adopted a motion on 24 January, 1997 to defer a decision on the introduction of mandatory post-call learning for lawyers until the fall of 1998. In the interim certain initiatives in relation to post-call learning, as set out in action plans under Recommendations 1, 2, and 3 of the Report, were to be investigated, pursued and reported on.
4. A working group was established by the Professional Development and Competence Committee on 9 January, 1997 to follow up on an implementation phase subsequent to Convocation's consideration of the *Post -Call Learning for Lawyers* Report. The members of the working group were Larry Banack (Chair), Michael Adams, Kim Carpenter-Gunn, Alan Treleaven and Paul Truster. The working group reported to the Committee on 13 March and made recommendations in five areas related to Recommendations 1, 2, and 3 of the Report.

5. Recommendation 2 of the Report as approved by Convocation, at page 21, suggested an advisory group drawn from different organizations to coordinate future approaches to continuing legal education for lawyers across the Province. The recommendation stated:

- 5) Long Term Planning Goals
The Law Society should
b) *assemble an advisory group whose short term goal is to define planning needs for post-call education and the means to meet those needs, and whose long term goal is to oversee their realization.*

The working group recommended that its five members be included in an advisory group and five additional members be invited from organizations directly involved in post-call learning. A list of potential members was presented for Committee agreement. The Committee approved the list subject to increased geographical representation from across the Province and a corresponding increase in the size of the advisory group from ten to twelve members. The members of the Advisory Group (with two more names to be announced) are:

W. Michael Adams	Stroud
Larry A. Banack	Toronto
Marc Bode	Thunder Bay
Brian Bucknall	Toronto
Kim A. Carpenter-Gunn	Hamilton
Professor Bruce Feldthusen	Faculty of Law, University of Western Ontario
Paul Perell	Toronto
Lorranine Shaloub	Windsor
Alan Treleaven	Law Society of Upper Canada
Paul Truster	Law Society of Upper Canada

6. A summary of action plans under Recommendations 1, 2 and 3 at Appendix A of the Report was presented to the Committee with the information that monthly implementation reports would be received in the future from the Advisory Group on the basis of the action summary set out by the working group. Committee members recommended a simplified summary of the action plans for this purpose.
7. On the funding of the advisory group, the working group confirmed that there were sufficient funds for the work of the Advisory Committee until the end of 1997; the approved budget of the Subcommittee on Mandatory Continuing Legal Education had a remaining balance of approximately \$25,000 that would be used for this purpose.
8. The Working Group provided information to the Committee on plans to communicate to the Profession, firstly through publication in the *Ontario Reports* of the Statement of Principles and Expectations (as required under Recommendation 1 of the Report) and, secondly, through a series of information updates in the *Ontario Lawyers' Gazette* as a means of keeping the profession in touch with future developments. Committee members emphasised the importance of informing members of developments in relation to planning for post-call learning.

4th April, 1997

Ontario Gazette

Mr. Gottlieb brought to Convocation's attention the recent edition of the Ontario Gazette's headline on MCLE which he believed to be misleading. The Treasurer advised that this matter would be corrected in the next edition.

ORDERS

The following Orders were filed.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Moeen Mahmood Ahmad Janjua, of the City of Mississauga, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada having read the Report and Decision of the Discipline Committee dated the 24th day of September, 1996 in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Duty Counsel wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Moeen Mahmood Ahmad Janjua be suspended for a period of two and one half months commencing at the conclusion of his administrative suspension, and that he pay Law Society costs in the amount of \$600 to his reinstatement.

DATED this 23rd day of January, 1997

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Thomas Allan Bates, of the City of London, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

4th April, 1997

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 14th day of November, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Thomas Allan Bates be reprimanded in Convocation and that he pay Law Society costs in the amount of \$1,000.

DATED this 23rd day of January, 1997

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Murray Harrison Miskin, of the Town of Whitby, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 7th day of October, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by J. Douglas Crane, Q.C., wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Murray Harrison Miskin be suspended for a period of three months commencing February 1st, 1997, Convocation further orders:

1. That the Solicitor's reinstatement be conditional upon his enrolling in and co-operating with the Practice Review Program;
2. That the Solicitor's reinstatement also be conditional upon his having no signing authority over any trust account containing client funds for a period of two years after his reinstatement; and,

4th April, 1997

3. That the Solicitor pay the Law Society costs in the amount of \$7,000 within a period of one year after his reinstatement.

DATED this 23rd day of January, 1997

"F. Marrocco"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Anthony Leandro Furgiuele, of the Town of Woodbridge, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 15th day of January, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by J. Douglas Crane, Q.C. wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Anthony Leandro Furgiuele be suspended for a period of two months commencing February 1st, 1997.

DATED this 23rd day of January, 1997

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Donald Alan Gardner, of the City of Mississauga, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

4th April, 1997

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 17th day of May, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Larry Levine, Q.C., wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Donald Alan Gardner be granted permission to resign his membership in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 23rd day of January, 1997

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Francis Xavier Fay; of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 26th day of November, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Paul J. French, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Francis Xavier Fay be suspended for a period of sixteen months effective as of the date of this Order and that he be permitted to resume practice only on the following conditions:

1. That he file a letter from his A.A. Sponsor attesting to compliance with conditions 2, 3, and 4, prior to returning to practice;
2. That he continue to attend A.A.;
3. That he join an A.A. group;
4. That he have an A.A. Sponsor;
5. That he provide the Society with the report of his physician that he able to resume practice;

4th April, 1997

6. That he not accept client retainers except through deposit to a trust account maintained by a solicitor approved by the Law Society, for a period of sixteen months following his return to practice.

DATED this 23rd day of January, 1997

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Peter David Clark, of the Town of Barrie, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 13th day of September, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Peter David Clark 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 and solicitor.

DATED this 23rd day of January, 1997

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

4th April, 1997

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF James Francis Dunn, of the City of Peterborough, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 6th day of August, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance but represented by Miles O'Reilly, Q.C., wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that James Francis Dunn pay Law Society costs in the amount of \$900.

DATED this 23rd day of January, 1997

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Robert Noel Bates of the City of Burlington, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER FOR INTERIM SUSPENSION

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 26th day of February, 1997, and the Affidavit of Neil Perrier, sworn the 19th day of February, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, and having heard counsel aforesaid;

4th April, 1997

CONVOCATION HEREBY ORDERS that Robert Noel Bates be suspended as of the date of this Order, such suspension to continue indefinitely until Complaints D179/95, D376/95 and D97/96 are finally resolved by Convocation.

DATED this 28th day of February, 1997

"S. Elliott"
Treasurer

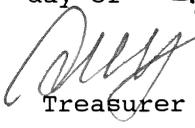
(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

CONVOCATION ROSE AT 4:40 P.M.

Confirmed in Convocation this *25* day of *April*, 1997


Treasurer