

MINUTES OF CONVOCATION

Friday, 29th May, 1998  
9:00 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Carey, Carpenter-Gunn, Carter, R. Cass, Chahbar, Cole, Copeland, Cronk, Crowe, DelZotto, Eberts, Epstein, Feinstein, Finkelstein, Furlong, Gottlieb, Harvey, Jarvis, Krishna, Lamont, Lawrence, Legge, MacKenzie, Manes, Martin, Millar, Ortved, Ruby, Sachs, Stomp, Swaye, Topp, Wardlaw, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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MOTION - REPORTS TAKEN AS READ

It was moved by Mr. Crowe, seconded by Mr. Topp that the Draft Convocation Minutes for the February Calls to the Bar, the Discipline and Regulation Convocations of April 23rd and 24th, 1998 and the Report of the Executive Director of Education and Addendum be adopted.

Carried

Draft Minutes of Special Calls in February and the Convocations of April 23rd and 24th, 1998

(see Draft Minutes in Convocation File)

THE DRAFT MINUTES WERE ADOPTED

Report of the Executive Director of Education and Addendum

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Executive Director of Education asks leave to report:



B.3. MEMBERSHIP UNDER RULE 50

B.3.1. (a) Retired Members

B.3.2. The following members are at least sixty-five years of age and fully retired from the practise of law, and request permission, under Rule 50 made under the Law Society Act, to continue their memberships in the Society without payment of annual fees:

David Lomer Dudley Beard	Toronto, ON
William Griffith Stevenson	Toronto, ON

B.3.3. (b) Termination of Rule 50

B.3.4. The following member wishes to terminate his retirement under Rule 50 and has provided the Society with the necessary documentation:

John Douglas Bugar	<u>Retired:</u> February 27, 1998
Barrie, ON	

B.3.5. (c) Incapacitated Members

B.3.6. The following member is incapacitated and unable to practise law, and has requested permission to continue her membership in the Society without payment of annual fees:

Mary Ann Scott	Unionville, ON
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B.4. MEMBERSHIP RESTORED

B.4.1. The following member has given notice that she ceased to hold judicial office and asks to be restored to the Rolls of the Law Society pursuant to Section 31(2) of the Law Society Act:

Wendy Elizabeth King	<u>Effective date</u>
	April 1, 1998

B.5. RESIGNATION - SECTION 12 OF REGULATION 708 MADE UNDER THE LAW SOCIETY ACT

B.5.1. The following members apply 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 appropriate persons. 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, Audit and Staff Trustees 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:

- (1) Andrea Susan Boddy of Toronto, was called to the Bar on February 8, 1994 and practised law from February 12, 1994 to January 9, 1998.

- (2) Graham John Culverhouse of London, England, was called to the Bar on March 30, 1990 and has not been engaged in the practice of law.
- (3) Stephen Baker Eprile of North York, was called to the Bar on March 30, 1990 and has never been engaged in the practice of law.
- (4) Anita Goldman of Thornhill, was called to the Bar on February 16, 1995 and has not been engaged in the practice of law in Ontario.
- (5) Janet Jeffrey of Winnipeg, Manitoba, was called to the Bar on March 25, 1994 and practised law in Ontario from March 25, 1994 to December 22, 1997.
- (6) Gregory Albrecht Mittman of Toronto, was called to the Bar on February 7, 1996 and practiced law from February 7, 1996 to May 1998.
- (7) Michelle Tarney Taj of Watertown, New York, was called to the Bar on June 24, 1994 and has not practised law in Ontario.
- (8) Ian Guy Thorne of Kingston, was called the Bar on March 21, 1969 and practised law from 1969 until December 31, 1990.
- (9) Chella Ann Turnbull of Mississauga, was called to the Bar on March 31, 1989 and resigned her membership in the Society on November 24, 1995. She was readmitted to the Bar on December 1, 1997.
- (10) Mark Leslie Warren of Toronto, was called to the Bar on February 19, 1997 and has not engaged in the practice of law.
- (11) Robert George Boychyn of Oshawa, was called to the Bar on March 23, 1973 and practised law from March 23, 1973 to January 31, 1998.

C.  
INFORMATION

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C.1. CHANGE OF NAME

C.1.1.	<u>From</u>	<u>To</u>
	Marcela Susana <u>Aroca</u>	Marcela Susana <u>Yoker</u> (Marriage Certificate)

C.2. ROLLS AND RECORDS

C.2.1. (a) Deaths

C.2.2. The following members have died:

Mahendrakumar Haribhai Patel Toronto	Called: April 9, 1987 Died: January 9, 1997
Edward Gordon Sheasby Calgary	Called: June 20, 1969 Died: January 10, 1997
Harold Herson Willson Leamington	Called: May 25, 1923 Died: April 18, 1997
Sam Foster Ross Hamilton	Called: September 21, 1939 Died: July 2, 1997
Fred Beverley Matthews Toronto	Called: June 19, 1930 Died: September 14, 1997
James Albert Holden Nepean	Called: September 21, 1939 Died: October 2, 1997
Horace Reginald Button Stouffville	Called: June 16, 1938 Died: October 20, 1997
Stuart Douglas Thom Etobicoke	Called: September 18, 1947 Died: December 5, 1997
Morris Kamin Windsor	Called: September 17, 1942 Died: January 11, 1998
Robert Earl Agnew Toronto	Called: September 17, 1936 Died: February 27, 1998
John Donald MacKenzie Pollock Willowdale	Called: October 15, 1942 Died: March 1, 1998
John Napier Grieve Toronto, ON	Called: June 22, 1960 Died: March 5, 1998
Robert Stanley Johnston Hamilton, ON	Called: November 20, 1930 Died: March 10, 1998
Alexander Murray Jeffery London, ON	Called: March 26, 1965 Died: March 18, 1998
Allan Archibald McNab Renfrew, ON	Called: September 21, 1939 Died: March 19, 1998
John Bruce Hodgson Toronto, ON	Called: June 28, 1956 Died: March 23, 1998

Alfred Charles Heakes  
Weston, ON

Called: June 29, 1950  
Died: March 26, 1998

Peter Douglas Ross  
Thunder Bay, ON

Called: March 26, 1971  
Died: March 30, 1998

Andrew Stuart Lemesurier  
Scarborough, ON

Called: June 23, 1955  
Died: March 31, 1998

Yong Tao  
North York, ON

Called: February 16, 1995  
Died: April 26, 1998

C.2.3. (b) Permission to Resign

C.2.4. On April 23, 1998, the following member was permitted to resign his membership in the Society and his name has been removed from the rolls and records of the Society:

Peter Frederick Piroth  
Toronto

Called: March 21, 1975

C.2.5. (c) Membership in Abeyance

C.2.6. Upon their appointments to the offices shown below, the membership of the following members has been placed in abeyance under Section 31 of The Law Society Act:

Paul Urbain Rivard  
Toronto

Called: March 22, 1974  
Appointed to Ontario Court of Justice  
(General Division)  
November 18, 1997

Ian James Binnie  
Ottawa

Called: February 16, 1995  
Appointed to Supreme Court of Canada  
January 8, 1998

Barry Herriot Matheson  
St. Catharines

Called: March 25, 1966  
Appointed to Ontario Court of Justice  
(General Division)  
March 17, 1998

Douglas Maxwell Belch  
Kingston

Called: March 21, 1969  
Appointed to Ontario Court of Justice  
(General Division)  
March 17, 1998

Russell Gordon Juriansz  
Toronto

Called: March 22, 1974  
Appointed to Ontario Court of Justice  
(General Division)  
March 17, 1998

John Bryan Shaughnessy  
Whitby

Called: April 9, 1976  
Appointed to Ontario Court of Justice  
(General Division)  
March 17, 1998

Myrna Lea Lack  
Oshawa

Called: March 29, 1977  
Appointed to Ontario Court of Justice  
(General Division)  
March 17, 1998

Thomas Albert Heeney  
Tillsonburg

Called: April 14, 1980  
Appointed to Ontario Court of Justice  
(General Division)  
March 17, 1998

ALL OF WHICH is respectfully submitted

DATED this the 29th day of May, 1998

Amendment: Ian James Binnie - should be William Ian Corneil Binnie - called March 17, 1967

REPORT OF THE EXECUTIVE DIRECTOR OF EDUCATION

29TH MAY 1998

ADDENDUM

B.  
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, May 29th, 1998:

Catherine Veronica Byrne	39th Bar Admission Course
Mark Douglas Cooper	39th Bar Admission Course
Heather Elizabeth Daigle	39th Bar Admission Course
Andre Claudio Dy	39th Bar Admission Course
Patricia Ann Faries	38th Bar Admission Course
Alexei Gratchev	38th Bar Admission Course
Giulia Haasz	39th Bar Admission Course
Marian Catherine Jacko	39th Bar Admission Course
Ruth Kimberley Kagan	39th Bar Admission Course
Medina Kosova	39th Bar Admission Course
Margarita Levin	39th Bar Admission Course

Robert Wayne McComb	39th Bar Admission Course
Barbara Joanne Morgan	39th Bar Admission Course
Doris Nachla	39th Bar Admission Course
Glory Nwabuogu	39th Bar Admission Course
Olufunmilayo Ngozi Ola	39th Bar Admission Course
Jason Howard Rabinovitch	39th Bar Admission Course
Mojdeh Sarah Rakhsha	38th Bar Admission Course
Shelina Sevany	39th Bar Admission Course
Arfan Tinawi	38th Bar Admission Course
Lisa Margret Welch Madden	39th Bar Admission Course

B.1.3. Transfer from another Province - Section 4

B.1.4. The following candidate has completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now applies to be called to the Bar and to be granted a certificate of Fitness at Convocation on Friday, May 29th, 1998:

Aurelia Iva Mauro

Province of Alberta

B.2. MEMBERSHIP UNDER RULE 50

B.2.1. (a) Retired Members

B.2.2. The following members are at least sixty-five years of age and fully retired from the practise of law, and request permission, under Rule 50 made under the Law Society Act, to continue their memberships in the Society without payment of annual fees:

Joseph Robert Comuzzi	Thunder Bay
Alfred Anthony Petrone	Thunder Bay
Edward Samuel Rogers	Thunder Bay
Lewis Harvey Rosenberg	Los Angeles, CA

B.3. RESIGNATION - SECTION 12 OF REGULATION 708 MADE UNDER THE LAW SOCIETY ACT

B.3.1. The following members apply 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 appropriate persons. 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, Audit and Staff Trustees 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:

- 1) Kevin Banks of Dallas Texas, was called to the Bar on March 22, 1991 and practised law from March 22, 1991 to March 1, 1998 with the exception of September 1, 1992 to September 1, 1993.
- 2) James Michael Chalke of Vancouver, BC, was called to the Bar on April 9, 1984 and practised law from April 9, 1984 to November 1997.

- 3) John Lewis Dunn of Orleans, was called to the Bar on February 12, 1992 and has not been engaged in the practice of law.
- 4) Mark McKay Heaney of Toronto, was called to the Bar on February 9, 1993 and has practised law since April 1993.
- 5) Paul Adrian Hemrend of Toronto, was called to the Bar on February 8, 1994 and practised law from February 8, 1994 for 3 weeks.
- 6) Ian Alexander Hunter of London, was called to the Bar on October 15, 1976 and has not been engaged in the practice of law.
- 7) Rhys William Jones of Winnipeg, Manitoba, was called to the Bar on April 7, 1982 and has practised law in Manitoba since 1988.
- 8) Carol Jennifer Konkin of Vancouver, British Columbia, was called to the Bar on February 7, 1992 and has practised law in British Columbia for six years.
- 9) Amiram Yair Kotler of Manhattan, New York, was called to the Bar on February 24, 1998 and has not been engaged in the practice of law .
- 10) Jeremy Michael Koshan of Calgary, Alberta was called to the Bar on April 13, 1962 and has not engaged in the practice of Ontario law since January 1978.
- 11) Katherine Angela Liao of Manhattan, New York, was called to the Bar March 25, 1994 and has not been engaged in practice of law.
- 12) Nasem Peter Malik of Ancaster, was called to the Bar on February 7, 1996 and has not been engaged in practice of law.
- 13) Sheryl Elizabeth McGeen of Emeryville, was called to the Bar on February 9, 1996 and practised law from February 9, 1996 to October 7, 1996.
- 14) Pamela Luigia Meneguzzi of Victoria, British Columbia, was called to the Bar on February 7, 1992 and practised law from 1992 to 1996.
- 15) Lorene Kim Nagata of Toronto, was called to the Bar on February 9, 1993 and practised law from February 1993 to October 6, 1997.
- 16) Charles Alexander Gregory Pearson of Edmonton, Alberta, was called to the Bar on February 7, 1992, practised for approximately one year in Ontario and is currently employed in Alberta.
- 17) Shail Pooransingh of Trinidad, West Indies, was called to the Bar on February 21, 1997 and has not been engaged in the practice of law.
- 18) Cameron Burke Richards of Victoria, British Columbia, was called to the Bar on February 16, 1995 and has not been engaged in the practice of law.
- 19) Michael Robert Shapray of Toronto, was called to the Bar on February 21, 1997 and has not been engaged in practice of law.

THE REPORT AND ADDENDUM WERE ADOPTED

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Executive Director of Education and Addendum were presented to the Treasurer and Convocation and were called to the Bar and the degree of Barrister-at-law was conferred upon each of them. They were then presented by Mr. Lamont to Madam Justice Sandra Chapnik to sign the Rolls and take the necessary oaths.

Catherine Veronica Byrne	39th Bar Admission Course
Mark Douglas Cooper	39th Bar Admission Course
Heather Elizabeth Daigle	39th Bar Admission Course
Andre Claudio Dy	39th Bar Admission Course
Patricia Ann Faries	38th Bar Admission Course
Alexei Gratchev	38th Bar Admission Course
Giulia Haasz	39th Bar Admission Course
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Margarita Levin	39th Bar Admission Course
Robert Wayne McComb	39th Bar Admission Course
Barbara Joanne Morgan	39th Bar Admission Course
Doris Nachla	39th Bar Admission Course
Glory Nwabuogu	39th Bar Admission Course
Olufunmilayo Ngozi Ola	39th Bar Admission Course
Jason Howard Rabinovitch	39th Bar Admission Course
Mojdeh Sarah Rakhsha	38th Bar Admission Course
Shelina Sevany	39th Bar Admission Course
Arfan Tinawi	38th Bar Admission Course
Lisa Margret Welch Madden	39th Bar Admission Course
Gregory Leung Chang	Province of British Columbia
Orvel Larry Currie	Province of Manitoba
Tasha Kheiriddin	Province of Quebec
Aurelia Iva Mauro	Province of Alberta
Kimberly Dawn Pepper	Province of Alberta
Shonda Helen Pierce	Province of Manitoba
Chantal Samuel	Province of Quebec
Daniel Urbas	Province of Quebec
Claire Vachon	Province of Quebec
Ann Margaret Wadden	Province of Nova Scotia

NOMINATION FOR TREASURER

The Secretary announced that there was one nomination for the office of the Treasurer of the Law Society of Upper Canada. Mr. Strosberg was nominated for Treasurer by Ms. Sachs and Messrs. Epstein, Wright, and Gottlieb.

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GUIDELINES FOR RETENTION AND OVERSIGHT OF OUTSIDE COUNSEL  
REPRESENTING THE LAW SOCIETY

I INTRODUCTION

In recognition of the mandate of the Law Society of Upper Canada (the "LSUC") to govern the legal profession in Ontario in the public interest, and in response to the ever-increasing cost of professional regulation matters including litigation, it is incumbent on the LSUC to communicate to its outside counsel uniform guidelines setting forth its expectations for the effective and cost-efficient handling of litigation matters, on its behalf. The LSUC's primary goal, of course, is to ensure that the LSUC continues to receive excellent legal representation, but it must also request that outside counsel retained on its behalf assist the LSUC in ensuring timely and accountable provision of legal services and in avoiding duplicative or unnecessary expenses.

These Guidelines, therefore, provide guidance as to the LSUC's requirements of outside counsel retained on its behalf. These Guidelines apply to all retainers of outside counsel by the LSUC except with respect to professional regulation, which is the subject of its own policy, and are supplementary to and part of the attached Agreement for Performance of Legal Services to be entered into by the LSUC and outside counsel retained by it.

II APPLICATION

These guidelines apply to counsel retained by the LSUC to provide advice, opinions or assistance on matters, or initiate or respond to judicial review applications and appeals and to conduct litigation.

III AUTHORITY TO RETAIN OUTSIDE COUNSEL.

All outside counsel retained by the LSUC pursuant to these guidelines will be retained by the Treasurer or the Secretary of the LSUC in consultation with the Chair of the Litigation Committee.

In selecting outside counsel to be retained on behalf of the LSUC, every effort will be made to take advantage of the broad experience of the profession subject to the following:

- (a) The qualifications and expertise of outside counsel candidates for the matter at issue, including the experience of outside counsel candidates in matters of a similar nature;
- (b) The willingness of outside counsel candidates to adhere to these Guidelines and the terms of the attached Agreement for Performance of Legal Services;
- (c) Equity and diversity hiring practices and policies of the LSUC as embodied in the LSUC's contract compliance policy from time to time;

- (d) The availability of outside counsel candidates within the time frame required by the LSUC;
- (e) The experience of outside counsel candidates with alternative dispute resolution techniques and the willingness of outside counsel candidates to consider and engage in appropriate cases in alternative methods of dispute resolution; and
- (f) Where a matter involves substantial legal fees or a specialized area of law and where circumstances permit, the Law Society will engage in a tendering process.

#### IV CONDITIONS OF RETAINER

All outside counsel retained by the LSUC pursuant to these Guidelines shall adhere to the provisions of these Guidelines and the terms of the attached Agreement for Performance of Legal Services unless otherwise agreed in writing by the Secretary of the LSUC or the Chair of the Litigation Committee. Without limiting the generality of the foregoing, all outside counsel retained by the LSUC pursuant to these Guidelines:

- (a) shall be in compliance with the LSUC's contract compliance policy as in force from time to time;
- (b) except where alternate fee arrangements are agreed upon in writing by the Secretary of the LSUC and approved by the Chair of the Litigation Committee, shall be paid a maximum hourly rate in accordance with the hourly rates provisions of the attached Agreement for Performance of Legal Services; and
- (c) shall be retained pursuant to the attached Agreement for Performance of Legal Services and shall report to and take instructions from the Treasurer, the Chair of the Litigation Committee or the Secretary of the LSUC or their delegate as set out in the said Agreement for Performance of Legal Services.

#### V APPROVAL OF ACCOUNTS

All accounts submitted to the LSUC by outside counsel retained pursuant to these Guidelines shall be approved by the Secretary of the LSUC or the Chair of the Litigation Committee. From time to time, the Litigation Committee of the LSUC, shall undertake or cause to be undertaken regular audits of accounts submitted to the LSUC by outside counsel retained on its behalf pursuant to these Guidelines. Outside counsel retained by the LSUC pursuant to these Guidelines shall cooperate fully with the LSUC in respect of all such audits. A review of outside accounts will be made where there is a substantial variance from the fee projected.

#### VI COORDINATION OF ACTIVITIES

It is expected that outside counsel retained by the LSUC pursuant to these Guidelines will work with the LSUC in developing an overall case strategy and will keep the LSUC, through the Secretary of the LSUC, promptly informed of important developments and deadlines in all matters being handled by outside counsel. Outside counsel retained by the LSUC pursuant to these Guidelines must obtain the prior consent of the Treasurer, the Chair of the Litigation Committee or the Secretary of the LSUC or before undertaking major expenditures such as investigations, examinations, employment or retainer of experts, filing of motions (except routine matters such as extensions of time), and significant research or preparation of legal memoranda. With respect to particular items:

- (a) Legal Research and Memoranda: All significant legal research conducted by or on behalf of outside counsel retained by the LSUC pursuant to these Guidelines must be authorized in advance by the Secretary of the LSUC. Outside counsel should be aware that, with some exceptions, the LSUC is primarily concerned with their legal conclusions. Thus, the preparation of legal memoranda should generally be avoided except for brief summary reports. Moreover, the LSUC should not be charged when such memoranda are edited or re-worked for the purposes of improving an associate's research or writing skills. Outside counsel should also be aware that where a matter involves an aspect of professional regulation the LSUC has considerable in-house expertise. No significant legal research matters should be undertaken by outside counsel without the prior written authority of the Secretary of the LSUC in order to ensure that duplicative or unnecessary legal research is not undertaken. Finally, if the legal research to be undertaken is also applicable to other cases being handled by outside counsel for other clients, the LSUC should be charged only for its proportionate share of the costs incurred with respect to such research;
- (b) Provision of Copies of Documents: In order to assist the LSUC in planning case strategy and setting financial reserves, outside counsel should send the Secretary of the LSUC copies of all pleadings, discovery and examination of documents in the form in which they were filed/served, as well as any other significant external or internal writings (including correspondence to or from counsel for other parties). Documents should be delivered or faxed, at the cost of the LSUC, only when time deadlines so require.
- (c) Settlement or Negotiated Resolutions: The attached Agreement for Performance of Legal Services requires that outside counsel retained by the LSUC pursuant to these Guidelines provide an initial case analysis, upon assignment of a file, within 30 days of being retained save in urgent circumstances. In initially evaluating the matter, outside counsel should consider such issues as the advisability of exploring early settlement or alternative methods of dispute resolution, the need for and identification of potential expert witnesses and whether any special investigative efforts are needed and whether these can be done by the LSUC in-house.  
  
The LSUC has at times obtained excellent results by exploring settlement at an early stage in proceedings including litigation and, in some instances, prior to the initiation of such proceedings. Thus, the LSUC may wish to discuss with outside counsel the advisability of entering into early settlement or other resolution discussions at the outset of a case or proceeding. Outside counsel should not undertake any such discussions with opposing counsel without first obtaining the approval of the Secretary of the LSUC.
- (d) Media Inquiries or Coverage: In order to ensure consistency and uniformity in setting forth the LSUC's position on litigation matters, outside counsel retained by the LSUC pursuant to these Guidelines should not respond to any media inquiries, or initiate same, without first consulting with the Secretary of the LSUC or, in urgent situations and in the absence of the Secretary, with the Chair of the Litigation Committee.

## VIII FEES AND BILLING ARRANGEMENTS

As noted above, the fees and billing arrangements applicable to outside counsel retained by the LSUC pursuant to these Guidelines are set out in the attached Agreement for Performance of Legal Services.

Generally, for each matter handled on behalf of the LSUC by outside counsel, the LSUC requests the proposals and suggestions of outside counsel for reducing the costs of the proceeding, including billing methods other than hourly rate billing and alternative dispute resolution opportunities, etc. The LSUC wants the suggestions of its outside counsel in developing a plan, specific to the facts of each case, to contain costs.

No change in staffing, hourly rates or other significant expenses during a retainer may be implemented without the prior approval of the Secretary of the LSUC in consultation with the Chair of the Litigation Committee.

#### IX ACCEPTANCE OF THESE GUIDELINES

The LSUC will consider outside counsel's submission of accounts to the LSUC, after outside counsel's receipt of these Guidelines, as acceptance by outside counsel of these Guidelines and the attached Agreement for Performance of Legal Services.

### AGREEMENT FOR THE PROVISION OF LEGAL SERVICES

#### I. INTRODUCTION

This Agreement is subject to the attached Guidelines for Retention and Oversight of Outside Counsel. The purpose of this Agreement is to establish fees and rules for the provision of all legal services rendered by appointed counsel ("Counsel") to the Law Society of Upper Canada (the "LSUC"). This Agreement may be cancelled or amended by thirty (30) days written notice delivered by either party hereto (in the case of cancellation and signed by both parties hereto (in the case of amendment)).

#### II. FEES AND BILLING PROCEDURES

The maximum hourly rate to be charged by counsel is as follows:

Senior Counsel 12 years since call	-	\$250.00
Counsel 6 to 12 years since call	-	175.00
Counsel 3 to 6 years since call	-	120.00
Counsel at Bar less than 3 years	-	90.00
Law Clerks/Students	-	50.00

Hourly rates charged should include all general overhead and support staff expenses. Time spent by Counsel or his/her law firm with respect to the opening and closing of files, secretarial work, internal messenger services, use of internal data banks and other internal costs are deemed to be included in the hourly rate of Counsel. The LSUC does not expect to be billed by outside counsel for routine secretarial work, messenger services, office supplies, or administrative fees for opening a file or billing a file as such expenditures are considered to be part of normal overhead expenses of Counsel.

Disbursements for overtime and meals should not be charged to the LSUC nor should the LSUC be charged for word processing services; postage; taxi fares for staff who work late; photocopy expenses at more than cost to outside counsel; and computer time other than reasonable and authorized computer legal research, and then only at cost.

In addition, unless prior written authorization is obtained from the Secretary of the LSUC, the LSUC *will not* pay for:

- (a) More than ten (10) docketed hours per day, including per hearing or trial day;

- (b) Delivery/filing charges by firm personnel;
- (c) As noted above, time spent in preparing or processing accounts to the LSUC or budgets;
- (d) Secretarial or clerical tasks performed by any timekeeper including such matters as date stamping, conflict checks, collating, binding, copying, faxing, scanning, calendaring, scheduling, making travel arrangements, opening or closing matters, and managing clerical work;
- (e) Organization of counsel's file or documents;
- (f) Significant legal research or the preparation of significant legal memoranda;
- (g) Diary maintenance or internal status reviews;
- (h) The use of expedited delivery services or messenger services, save in the case of urgency having regard to time deadlines;
- (i) Meal expenses within Counsel's local jurisdiction;
- (j) Other overhead including, but not limited to, the use of firm conference rooms, equipment rentals, the use of books or periodicals, attendance at or conduct of seminars, staff overtime and related expenses, secretarial services and word processing;
- (k) Fax transmissions. Faxes received may be charged at the rate of \$0.15 per page. Long distance connection fees for fax transmissions may be charged;
- (l) Time spent in transit by Counsel, in excess of one-half the applicable hourly rate for the involved Counsel. No fees may be charged for time spent in transit unless such travel is necessitated by the demands of the matter being handled for the LSUC. In appropriate circumstances, Counsel should consider the possibility of conducting long distance discussions by conference call instead of travelling. If transit time is spent working for one or more clients in addition to the LSUC, the LSUC should be billed only for its proportionate share of such time spent.

Disbursements incurred by Counsel in relation to travelling on LSUC business shall be approved by the Secretary of the LSUC. While travelling on LSUC business, outside counsel are entitled reasonable expenses but the LSUC should not be billed for first-class or business class airline tickets or hotel accommodations.

### III. ACCOUNTS

Accounts will be rendered monthly to the Secretary of the LSUC and will include, at a minimum, the following information:

- Date of each service rendered;
- Time period covered by account;
- Detailed description of service rendered;
- Amount of time involved for services rendered;
- Identity of person providing service;
- Hourly rate of person providing service; and
- Number of hours spent by each person providing service.

Computer records in support of accounts will be provided to the Secretary of the LSUC upon reasonable request therefor.

#### IV. REPORTING REQUIREMENTS

Upon assignment of a file, except in urgent circumstances, Counsel will report in writing to the Secretary of the LSUC within 30 days of being retained with an initial assessment of the matter covering such issues as damages and liability (where applicable) and setting out a proposed course of action:

1. Regarding additional investigation or expert opinions or advice which may be required, together with supporting reasons therefor and an estimate of the projected costs thereof, including fees and disbursements;
2. Including an assessment of the potential for employing alternative dispute resolution techniques in the matter and the suggested nature and timing of same where applicable;

Subsequent written status reports are to be delivered to the Secretary of the LSUC on a quarterly basis, unless otherwise agreed to by the Secretary of the LSUC in writing, and more frequently as circumstances require.

#### V. DELEGATION

- (1) Counsel will have carriage of the file and may assign specific portions of the work to associate counsel, other counsel or law clerks within the Counsel's firm only with the prior agreement of the Secretary of the LSUC.
- (2) Only one lawyer may attend at a hearing or meeting at the cost of the LSUC unless the prior written consent of the Secretary of the LSUC is first obtained.

#### VI. INSTRUCTIONS

Counsel will report and take instructions from the Secretary of the LSUC and, as occasion requires, the Treasurer or the Chair of the Litigation Committee.

29th May, 1998

VII CONFLICT OF INTEREST

Counsel hereby agrees not to act on behalf of any client in connection with any action or proceeding against the LSUC during the currency of her/his retainer by the LSUC.

DATED at the City of \_\_\_\_\_, in the Province of Ontario,

this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

THE LAW SOCIETY OF  
UPPER CANADA

\_\_\_\_\_  
Counsel Retained by LSUC

Per:

\_\_\_\_\_  
Name of Counsel retained on behalf of  
the LSUC, from the Firm of \_\_\_\_\_ )

.....

IN CAMERA

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**IN CAMERA Content Has Been Removed**

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IN PUBLIC

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MOTION - SUSPENSIONS

It was moved by Mr. Krishna, seconded by Mr. DelZotto THAT the rights and privileges of each member who has not paid the Membership Fee, and whose name appears on the attached list, be suspended from June 1st, 1998 and until their fee is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

It was moved by Mr. Krishna, seconded by Mr. Ruby 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 June 1st, 1998 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)

Mr. Wilson commented on the diligent work of the staff of the Law Society in reducing the number of suspensions.

Report of the Finance and Audit Committee

Meeting of May 14th, 1998

Mr. Krishna presented the Report of the Finance and Audit Committee for Convocation's approval.

Finance and Audit Committee  
May 14, 1998

Report to Convocation

Purpose of Report: Decision Making

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on May 14, 1998. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. DelZotto, D. Murphy, G. Swaye, and B. Wright. Staff members in attendance were J. Saso, W. Tysall, D. Carey, and R. White.

1. The Committee has two matters that require Convocation's approval:
  - request for funding from the Ontario Bar Assistance Program ("OBAP"), and
  - a request from Justices of the Peace, that are members of the Law Society, that they be excused payment of fees pursuant to Section 31 of the Law Society Act.
  
2. A letter was received from the Ontario Bar Assistance Program requesting funding from the Law Society for their program (pages 5 - 24). The request from the OBAP indicated that LPIC has paid \$50,000 for the period ending August 31, 1998 and that CBAO has pledged \$15,000 in the form of a special grant.

- 3. The Finance and Audit Committee debated the issue and noted that the Society is already remitting \$104,500 for the 1998 year to LINK, another assistance program available to all members of the Law Society. It was also noted that the 1998 budget has already been approved by Convocation and excludes a contribution to OBAP.
- 4. The Finance and Audit Committee recommends that the request for funding by the Ontario Bar Assistance Program be denied at this time as the Society already contributes funding to one assistance program for members and that the budget has been set for the 1998 year.
- 5. The Law Society has received a request from members of the Law Society who hold appointments as Justices of the Peace that they be excused payment of fees pursuant to Section 31 of the Law Society Act. Section 31 provides in part:
  - 31. (1) The membership of a person is in abeyance while the person holds office,
    - (a) as a full-time judge of any federal, provincial or territorial court, as a full-time master of the Ontario Court (General Division), or as a full-time case management master; or
    - (b) as a full-time member of the Ontario Municipal Board or as a full-time member of a tribunal that has a judicial or a quasi-judicial function and that is named in the regulations for the purposes of this section
- 6. At this time, the Finance and Audit Committee recommends no change in the membership fee status for Justices of the Peace. There is a joint Working Group of the Finance and Audit Committee and the Admissions and Equity Committee reviewing all membership fees. The status of the Justices of the Peace will be included in this review.

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

- (1) Copy of Memorandum from Mr. Richard F. Tinsley to Mr. Dave Carey dated May 6, re: OBAP, copy of letter to Mr. John G. Starzynski, Ontario Bar Assistance Program from Mr. Tinsley dated April 20, 1998 and copy of letter to Mr. Tinsley from Mr. Starzynski, Volunteer Executive Director, OBAP dated April 3, 1998 re: OBAP Funding Proposal together with a paper entitled Proposal to LPIC for an initiative to renew and expand the Ontario Bar Assistance Program for Loss Prevention. (pages 5 - 24)

Finance and Audit Committee  
May 14, 1998

Report to Convocation

Purpose of Report: Information Only

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on May 14, 1998. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. DelZotto, D. Murphy, G. Swaye, and B. Wright. Staff members in attendance were J. Saso, W. Tysall, G. Lalonde, D. Carey, and R. White.

1. The Committee is reporting on the following matters:
  - General Fund financial statements for the three months ended March 31, 1998 and the Lawyers Fund for Client Compensation financial updates for the three months ended March 31, 1998
  - Information Systems program review, and
  - Investments report for the General Fund and the Lawyers Fund for Client Compensation for the three months ended March 31, 1998.
2. Enclosed on pages 28 - 41 are the financial statement highlights for the General Fund and the Lawyers Fund for Client Compensation for the three months ended March 31, 1998. Also enclosed is the financial statement for the General Fund for the three months ended March 31, 1998 as well as a financial update on the Lawyers Fund for Client Compensation for the three months ended March 31, 1998.
3. Gord Lalonde, the Society's Chief Information Officer, attended the meeting and presented to the Committee the program review for the Information Systems Department. The report is enclosed on pages 42 - 56.
4. An investment report for the General Fund and the Lawyers Fund for Client Compensation for the three months ended March 31, 1998 is enclosed. The report indicates compliance with the Society's investment policies, the holdings in each Fund as at March 31, 1998, and details the transactions for the three months ended March 31, 1998 (pages 57 - 65).

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

- (1) Copy of Memorandum from Ms. Wendy Tysall to the Chair and Members of the Finance and Audit Committee dated May 5, 1998 re: i) General Fund Financial Statement highlights for the three months ended March 31, 1998, and ii) Lawyers Fund for Client Compensation highlights for the three months ended March 31, 1998. (pages 28 - 41)
- (2) A copy of a paper entitled Information Systems Program Review. (pages 42 - 56)
- (3) Copy of the Investment Report for the General Fund and the Lawyers Fund for Client Compensation for the three months ended March 31, 1998. (pages 57 - 65)

Re: Request for funding from the Ontario Bar Assistance Program ("OBAP")

A debate took place on the Committee's recommendation to deny funding to the Ontario Bar Assistance Program.

It was moved by Ms. Cronk, seconded by Messrs. Topp and Carter that \$50,000 be given to the Ontario Bar Assistance Program.

Carried

ROLL-CALL VOTE

Adams	Against
Angeles	For
Armstrong	For
Arnup	For
Backhouse	For
Banack	For
Carter	For
Chahbar	Against
Cole	Against
Copeland	For
Cronk	For
Crowe	Against
DelZotto	Against
Eberts	For
Feinstein	For
Gottlieb	Against
Krishna	Against
Legge	For
Martin	Against
Millar	For
Ortved	For
Ruby	For
Sachs	For
Swaye	Against
Topp	For
Wilson	Against

Vote 15 - 10

It was moved by Mr. Martin, seconded by Mr. DelZotto that the Ontario Bar Assistance Program provide a budget.

Carried

THE REPORT AS AMENDED WAS ADOPTED

Budget Process

Mr. Krishna asked for Convocation's guidance on the budget process and whether to stay with the existing budget or reduce operating expenses by 10% within the Law Society's control or increase fees.

A discussion followed with remarks by the Treasurer on the issue.

Convocation took a brief recess at 11:15 a.m. and resumed at 11:40 a.m.

Discussions continued on the budget process.

Report to Convocation on Plans for the Homeless

Ms. Backhouse presented the Report on Plans for the Homeless.

REPORT TO CONVOCATION ON PLANS FOR THE HOMELESS

APRIL 5TH, 1998 DINNER

Notwithstanding the media coverage, the Law Society's April 5th dinner for the homeless was a great success. Fifty volunteer lawyers and judges enthusiastically worked to feed what was described as the largest number of homeless people fed at one time in Toronto's history. Three hundred people were fed a roast beef and chicken dinner. Two hundred additional people were provided a \$10 voucher for Swiss Chalet plus a \$10 bill. This was made possible through the generosity of a member of the profession and was at no cost to the Law Society.

Two hundred and fifty gift bags were distributed containing such items as socks, underwear, soap, shampoo, suntan lotion, kleenex, toothpaste, toothbrush, comb, hat, chocolate bar, orange, etc. The gift bag items came largely from corporate sponsors. Volunteer nurses on the Wellesley Central Hospital health bus provided medical services to guests.

Almost all the guests were polite and well-behaved. Many expressed their thanks to the volunteers. Two (out of 500) got into a brief altercation. We had been told in advance that this was not unusual for this kind of event. We had a small number of plainclothes police officers in attendance. The situation was immediately brought under control. This did not spoil the evening for either the other guests or the volunteers.

Perhaps because we did not allow the media inside while the guests were eating, it chose to focus on the negative, exaggerating the few people we could not accommodate. The experienced volunteers from the St. Andrews Church Out of the Cold program who attended to assist at the event described the dinner as a "triumph".

Proposed next celebratory Thanksgiving dinner: Sunday, October 4, 1998

On going Plans

Weekly Breakfasts

The Law Society has been asked to join the Out of the Cold program as a separate entity. We are advised that weekly breakfasts are needed during the spring, summer and fall when many of the Out of the Cold winter programs are not operating and malnutrition is a serious concern.

- Accordingly, it is proposed that breakfasts be held in the cafeteria in the basement of Osgoode Hall beginning May 14, 1998 on Thursdays from 7:30 a.m. - 8:15 a.m. until Labour Day and then on Saturdays until Thanksgiving.
- It will be advertised that admission will be restricted to the first 100 people. The first 100 guests who arrive will be given tickets and a ticket will be required to gain admission.
- This is proposed as a no cost item to the Law Society.
- We are soliciting contributions from the profession and have already received sufficient commitments to get the program underway.
- We estimate the cost of each breakfast to be approximately \$500.00 which will be the donation required to sponsor a breakfast. The firm or group of lawyers who make this contribution will be announced as the sponsor. The sponsor is then welcome to send up to five volunteers to assist with the breakfast. Volunteers will be needed from 6:30 to 8:30 a.m. on Thursday of the breakfast their firm is sponsoring.

Pro Bono Legal Clinic

- We have also been asked to set up a weekly legal clinic to provide pro bono legal advice at the Out of the Cold Monday night dinners held at St. Andrew's Church from November to March. We propose to ask law firms to commit to providing two lawyers for two to three Monday nights, from 6:00 p.m. to 9:00 p.m.

Barbecue/Picnic

- It is proposed to hold a barbecue/picnic for the homeless on the grounds at Osgoode Hall on Saturday, August 15, 1998 from 11:30 a.m. to 2 p.m. The cost of this event will be raised from donations from the profession. Admission would be restricted to 600 people. Invitations would be distributed in advance to centres that serve the homeless and admission would be restricted to those with invitations.
- Benchers wishing to volunteer either themselves (or their firms) in regard to any of the above should contact Nancy Backhouse.

.....

A debate followed.

The Treasurer expressed his appreciation and thanks for the work undertaken by Ms. Backhouse and Mr. Teplitsky in their initiative.

It was moved by Ms. Backhouse, seconded by Mr. Ruby that the program continue in the same manner under the sponsorship of the Law Society with an amendment by Mr. DelZotto and accepted by the mover and seconder that the program continue at no cost to the Society.

Carried

ROLL-CALL VOTE

Adams	For
Angeles	For
Armstrong	For
Arnup	For
Backhouse	For
Banack	For
Carey	For
Carpenter-Gunn	For
Carter	For
Chahbar	For
Cole	Against

Copeland	Abstain
Cronk	For
Crowe	Abstain
DelZotto	For
Eberts	For
Epstein	For
Feinstein	For
Finkelstein	For
Gottlieb	For
Krishna	For
Legge	For
MacKenzie	For
Manes	For
Martin	Against
Millar	For
Ortved	Against
Ruby	For
Sachs	For
Stomp	Against
Swaye	For
Topp	For
Wilson	Abstain
Wright	For

Vote 27 - 4 (3 abstentions)

THE REPORT WAS ADOPTED

Budget Process (cont'd)

It was moved by Mr. Krishna, seconded by Mr. Ruby that the Finance Committee is authorized to examine all options including a target reduction of 10% as one of the options and to report on the effects of those options.

Carried

MOTION - APPOINTMENT

It was moved by Mr. Crowe, seconded by Mr. Topp THAT Abraham Feinstein be appointed to the Board of Directors of the Federation of Law Societies.

Carried

Report of the Admissions & Equity Committee

Meeting of May 14th, 1998

Mr. Epstein presented the Report of the Admissions & Equity Committee and spoke to the item on Examination Security.

Report to Convocation

Purpose of Report: Decision Making/Information

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions & Equity Committee (“the Committee”) met on May 14, 1998. Committee members in attendance were Philip Epstein (Chair), Nancy Backhouse (Vice-Chair), Nora Angeles, Gordon Bobesich, Allan Lawrence, Robert Martin, Dean Marilyn Pilkington, and Dean Sanda Rodgers. Staff in attendance were Mimi Hart, Wendy Johnson-Martin, Kimberley Saikkonen, Sophia Sperdakos, Alan Treleaven, and Roman Woloszczuk.
2. The Committee is reporting on the following matters:
  - ◆ Phase Three 1998 Academic Policies and Procedures
  - ◆ Proposed Amendment to Rule 50
  - ◆ Amendment to Articling Abridgment Policy
  - ◆ Examination Security

PHASE THREE 1998 ACADEMIC POLICIES AND PROCEDURES

1. The Admissions and Equity Committee’s mandate includes developing, for Convocation’s approval, policies to ensure that the accreditation process operates in a reliable, fair, open, and equitable manner.

2. The Phase Three 1998 Academic Policies and Procedures (formerly known as Phase Three Requirements for Standing) set out the rules concerning the passing standard for the Bar Admission Course, the consequences of failure, grounds upon which special accommodation is granted, and consequences to students who violate applicable rules.
3. In 1997 Convocation approved a Committee proposal that it would not be necessary to seek approval of the Requirements for Standing each year unless substantive changes were being made to the Requirements. As a result of a number of proposals made by the Committee and approved by Convocation in recent months substantive changes to the Academic Policies and Procedures are necessary for Phase Three 1998.
4. Appendix 1 contains the proposed Phase Three 1998 Academic Policies and Procedures.
5. The Committee requests that Convocation consider the proposed Academic Policies and Procedures and, if satisfied, approve them.

#### PROPOSED AMENDMENT TO RULE 50

##### Background

1. Rule 50 of the Rules made under section 62(1) of the *Law Society Act* contains provisions for the payment of various fees and prescribes dates by which payments are to be made. Four aspects of the rule have particular relevance to the Department of Education, namely those sections dealing with student members, transfer members, call and admission, and occasional appearances. Appendix 2 contains the applicable text of the current rule.

##### Reasons for Proposed Changes

2. Under the current rules various fees are specified requiring amendments to the rule each time changes to the fees are approved by Convocation. The proposed amendment to the rule replaces the listing of specific fees with the term "fee in the amount set by Convocation from time to time". Convocation continues to have authority to set the fees but the rules do not have to be amended each time a change is approved.
3. Under the current system payment due dates for tuition and call fees are not coordinated. Tuition fees are not due until the first day of classes. On this basis it can be difficult to accurately predict enrolment so as to be able to deal efficiently with student matters such as wait lists, location preferences and changes for either Phase, session preferences and changes for Phase One, and morning and afternoon preferences for Phase Three. It is proposed that the student tuition and call fee be payable at the same time upon the date specified by the Office of the Registrar for registration in Phase Three or in the case of transfer applicants in conjunction with the letter initiating their application.
4. Under the proposed changes there would be increased lead time for students and transfer (where eligible) candidates to arrange tuition fee deferments through the Ontario Student Assistance Program, or to ensure that firms or sponsoring agencies who have committed to paying the required fees on behalf of the student or transfer member have honoured their commitment within the prescribed deadlines.

##### Motion

5. Convocation is requested to consider and approve the motion set out in Appendix 3 and, if satisfied, to approve it.

## AMENDMENT TO ARTICLING ABRIDGMENT POLICY

### Background

1. In 1995 the former Articling Subcommittee made a proposal, which was approved, that under certain limited circumstances students be given permission to abridge the required 52 weeks of articles on compassionate grounds. Under the policy the maximum abridgment permissible is one month.
2. The types of situations that would qualify for such compassionate abridgments were articulated at the time the policy was introduced and apply regardless of the length of the abridgment requested. Examples include students who take parental leave, become unable to article due to prolonged illness or accident, or whose close relatives become gravely ill and the student must travel out of province.
3. Pursuant to the policy, the Articling Director is permitted to approve applications for abridgments up to a maximum of two weeks. The former Articling Subcommittee was authorized to consider applications for abridgments from two to four weeks.
4. The current policy also provides that  
    appeals from denials of such abridgments by the Articling Director be in writing only, and to the Articling Subcommittee. Decisions of the articling Subcommittee on such appeals would be final.  
  
    appeals from denials of two to four week abridgment requests by the Articling Subcommittee be in writing only, and to the Legal Education Committee. Decisions of the Legal Education Committee on such appeals would be final.
5. With the introduction of policy governance the Articling Subcommittee was disbanded. The Admissions & Equity Committee now considers applications for abridgments from two to four weeks.

### Proposed Change

6. The Committee is of the view that there is no reason that the Articling Director should not have the authority to consider all applications for compassionate abridgments up to four weeks. The Articling Director is capable of applying the appropriate criteria to applications whether they be for up to two weeks or two to four weeks.
7. The Committee would continue to determine appeals from decisions of the Articling Director as it does now with respect to compassionate abridgment requests of up to two weeks.
8. The Committee proposes that Convocation approve the following amendment to the current abridgment policy:  
  
    that the Articling Director be permitted to approve or deny applications for compassionate abridgments of up to four weeks.  
  
    that appeals from denial of such abridgments shall be in writing only and to the Admissions & Equity Committee. The Committee's decisions on such appeals shall be final.

### EXAMINATION SECURITY

1. It has come to the attention of the Department of Education and the Admissions & Equity Committee that a Phase Three 1996 examination was in circulation among an unknown number of students during Phase Three 1997. This represents a breach in the examination security system as all examinations are administered according to a process that allows the development and maintenance of a confidential secure bank of questions. Some questions from the 1996 examination were re-used on the 1997 examination in the same course.
2. There will be an investigation into the breach of examination security and efforts will be made to determine how the breach occurred and who was involved.
3. The Committee has also considered possible ramifications of the incident for students who failed an examination in which questions from a 1996 examination were re-used.
4. Concern has been raised that because of the norm-referencing marking system, access to the examinations, if widespread, might have resulted in the pass for each examination being higher, thereby resulting in a unfairly elevated failure rate.
5. While it is clear that there has been some breach of examination security, preliminary inquiries suggest that there was not widespread knowledge of the breach or widespread use of the leaked examination.
6. Further, an examination of the pass rate in the examinations in 1997 does not suggest that the passing grade in 1997 was affected by any breach in 1996 examination security. With respect to the 1997 examination in which questions from the circulated 1996 examination were re-used, the 1997 passing grade was only 52.
7. Students who failed examinations in 1997 are permitted to write two supplementals in any subject. Most students writing supplementals from Phase Three 1997 have now completed the process and have been called or are eligible for call to the bar. Approximately 46 students have not, as yet, completed the process. In most cases students still in the process have already failed at least one, and in some cases two supplemental examinations, in addition to the original Phase Three 1997 examination in any given subject. The Committee is satisfied that this demonstrates weakness in the subject area, not an unfairly elevated passing mark. The supplemental examination process is continuing unaltered. There is one further supplemental examination sitting in July.
8. The Committee will consider what has occurred as it assesses what changes to make in the examination system for Phase Three 1998. The Committee will provide options and recommendations to Convocation in June.

### APPENDIX 1

#### 40th Bar Admission Course: Phase Three 1998 Academic Policies And Procedures

#### I. GENERAL

##### Definitions

1. In these academic policies and procedures,
  - (1) "course" means any section of Phase Three: Business Law, Civil Litigation, Criminal Procedure, Estate Planning and Administration, Family Law, Professional Responsibility and Practice Management, Public Law, or Residential Real Estate.

- (2) "licensing examination" means the examination in each of the following nine areas: Business Law, Civil Litigation, Criminal Procedure, Estate Planning and Administration, Family Law, Professional Responsibility and Practice Management, Public Law, Residential Real Estate, and Accounting, and any special or supplemental examination.
- (3) "Registrar" includes a person designated by the Executive Director of Education to perform the duties of the Registrar.

#### Pass Standing

2. (1) To achieve a pass standing in Phase Three, you must pass each licensing examination and any required course work.
- (2) If you passed a licensing examination and any required course work, during either of the two previous Bar Admission Courses, you will receive credit for that course and will not have to write the related licensing examination nor submit any related required course work in the 40th Bar Admission Course.

## II. LICENSING EXAMINATIONS

#### Licensing Examination Schedule

3. (1) Subject to subsections (3), (4) and (5), you must write each licensing examination at the regular sitting.
- (2) If you do not write a licensing examination at the required time, you will fail the licensing examination.
- (3) You may apply in writing to the Registrar for permission to reschedule a licensing examination to the next sitting.
- (4) The Registrar may require you to provide documents substantiating the application.
- (5) You must apply as soon as reasonably possible before the licensing examination or, if unable to apply before, within five business days after the licensing examination.

#### Supplemental Examinations

4. (1) If you fail any licensing examination, you may write up to two supplemental examinations in that area provided that all supplemental examinations must be completed by August 31, 1999, after which time your supplemental examination privileges expire.
- (2) If you fail a second supplemental examination in an area, you are not permitted a third attempt at a supplemental examination in that area and you stand failed in the related course. You may be eligible to repeat the related course under section 8.
- (3) Subsections (1) and (2) do not apply to the Accounting examination. If you fail the Accounting examination, you may attempt up to five supplemental Accounting examinations at any time.
- (4) You must pay a fee of \$53.50 (GST included) for each supplemental examination you write.

### III. COURSE WORK

#### Late Submission or Completion of Course Work

5. Subject to section 6, if you do not complete course work at the prescribed time, you will receive a fail grade for that course work.

#### Relief from Consequence

6. (1) Upon your written application, the Registrar may relieve you from the consequence of late submission or completion of course work only if satisfied that the lateness is,
- (a) an exceptional occurrence, and
  - (b) due to a significant medical or compassionate reason that is not employment-related.
- (2) Prior to granting the relief noted in subsection (1), the Registrar may require you to complete prescribed special course work.
- (3) The Registrar may require you to provide documents substantiating your application.

#### Supplemental Course Work

7. (1) If you receive a fail grade for course work, you may complete supplemental course work.
- (2) You are not permitted a third attempt at supplemental course work.
- (3) You must pay a fee of \$53.50 (GST included) for each supplemental or further supplemental course work granted in each course.

### IV. REPEATING COURSES

8. (1) Subject to subsection (2), if you fail a course, you may repeat that course at the next scheduled date.
- (2) If you are unsuccessful after taking a course twice, you may repeat it again only after satisfying the Registrar by written application that a significant change in your circumstances will likely result in successful completion of that course. You will not be permitted to take any course more than three times.

### V. APPLICATION FOR ACCOMMODATION

#### Application to Registrar

9. (1) If you are disadvantaged by family status<sup>1</sup> or disability in completing Phase Three, you may apply in writing to the Registrar for accommodation.
- (2) Your written application must propose the accommodation intended to minimize the disadvantage.
- (3) You must apply in sufficient time to permit the accommodation to be made.

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<sup>1</sup> Family status means the status of being in a parent and child relationship.

- (4) The Registrar may require you to provide documents substantiating your application.
- (5) The Registrar will advise you in writing what accommodation, if any, has been granted.

VI. ACADEMIC OFFENCES

Academic Offences

- 10. You must not obtain or give improper assistance in writing licensing examinations or completing course work, including gaining or attempting to gain unauthorized access to examination questions or aiding someone else to do so.<sup>2</sup>
- 11. You must comply with all licensing examination-related procedures and instructions, including oral instructions.

Consequence of Breach

- 12. Contravention of section 10 or 11 may result in a fail standing in Phase Three and disciplinary action pursuant to section 38 of the *Law Society Act*.

APPENDIX 3

MOVED THAT CONVOCATION AMEND THE ENGLISH AND FRENCH VERSIONS OF RULE 50 OF RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT TO READ AS FOLLOWS:  
[Changes in bold print.] (see Report in Convocation file)

ENGLISH VERSION

RULE 50 - Fees

50. The fees and levies that are payable to the Society shall be paid in the circumstances and at the times specified as follows, and the amount of a fee or levy shall be the sum of the amount specified and any tax that is required by law to be paid by the person receiving the service and collected by the Society: (Amended April 26, 1991)

STUDENT MEMBERS

Upon filing an application for admission as a student member of the Society-Non-refundable Application Fee in the amount set by Convocation from time to time.

Upon registering to attend Phase One or Phase Three of the Bar Admission Course, payable on or before the day specified by the Office of the Registrar, a tuition fee in the amount set by Convocation from time to time.

In the event of a late filing of an application, late payment of tuition fees, or late filing of any of the documentation required by Subsection 23 (11) of Regulation 708 of the Revised Regulations of Ontario, 1990, a late filing fee. For late tuition fees, payable for each day late thereafter, an additional late filing fee in the amount and to a maximum set by Convocation from time to time.

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<sup>2</sup> Improper assistance also includes copying any part of another person's work, or consulting or collaborating with another person beyond the preparatory or discussion stages of course work, except as expressly permitted by written instructions.

### TRANSFER MEMBERS

Upon filing a letter of application for admission initiating the transfer process under section 4 of Regulation 708 of the Revised Regulations of Ontario, 1990: Non-refundable Application Fee in the amount set by Convocation from time to time..

*Note: Delete "Upon sitting the common law examination..... \$500" because it is no longer offered.*

Upon submitting a letter of application electing the self-study approach in one or more subject areas of the transfer examination, an examination fee in the amount set by Convocation from time to time.

Upon submitting a request to sit for each supplemental examination, payable on or before the day specified by the Office of the Registrar, a supplemental examination fee plus the costs of any prescribed study materials relevant to the examination in the total amount set by Convocation from time to time.

Upon submitting a letter of application electing enrolment in one or more sections of Phase Three of the Bar Admission Course (including the examination in that section ), a tuition fee in the amount set by Convocation from time to time.

### CALL AND ADMISSION

#### General

For call to the bar and admission as a solicitor of candidates from the Bar Admission Course or transfer applicants under section 4 of the Regulation 708 of the Revised Regulations of Ontario, 1990, payable on or before the day specified by the Office of the Registrar as the deadline for registration to attend Phase 3 or in the case of a transfer applicant, accompanying the letter of application initiating the transfer process, a fee in the amount set by Convocation from time to time.

For call to the bar and admission as a solicitor of

- (a) deans of approved law schools after they have entered upon the second consecutive year in such position; or
- (b) other full-time members of the faculties of such law schools after they have entered upon the third year in such position,

payable upon filing an application, a fee in the amount set by Convocation from time to time.

### OCCASIONAL APPEARANCES

For call to the bar and admission as a solicitor to act as counsel in a specific proceeding, payable upon filing application a fee in the amount set by Convocation from time to time.

### FRENCH VERSION

[Changes in bold print] (see Report in Convocation file)

#### Règle 50 -Droits et cotisations

50. Les droits et cotisations suivants doivent être versés au Barreau dans les cas et aux moments spécifiés ci-dessous; le montant exigible correspond au montant précisé, majoré de la taxe éventuelle que le membre est tenu par la loi d'acquitter et que le Barreau est tenu par la loi de percevoir. (Modifié le 26 avril 1991)

### MEMBRES ÉTUDIANTS

Lors du dépôt de la demande d'admission en qualité de membre étudiant du Barreau, des droits d'admission non remboursables dont le montant est fixé par le Conseil.

Lors de l'inscription pour suivre la phase I ou III du Cours de formation professionnelle, à verser au plus tard le jour précisé par le bureau du registraire, des frais de scolarité dont le montant est fixé par le Conseil.

En cas de dépôt tardif de la demande ou des documents visés au paragraphe 23(11) du Règlement 708 des Règlements refondus de l'Ontario de 1990, ou en cas de paiement tardif des frais de scolarité, une pénalité. En cas de paiement tardif des frais de scolarité, une pénalité additionnelle, pour chaque jour de retard, dont le montant et le plafond sont fixés par le Conseil.

### MEMBRES ADMIS PAR VOIE DE TRANSFERT

Lors du dépôt de la demande d'admission déclenchant la procédure de transfert qui est visée à l'article 4 du Règlement 708 des Règlements refondus de l'Ontario de 1990, des droits d'admission non remboursables dont le montant est fixé par le Conseil.

*(Note : Delete Pour subir l'examen de common law: 500 \$ because it is no longer offered.)*

Lors du dépôt de la demande d'autoformation dans une ou plusieurs matières de l'examen de transfert, des frais d'examen dont le montant est fixé par le Conseil.

Lors du dépôt de la demande d'examen de reprise, à verser au plus tard le jour précisé par le bureau du registraire, des frais d'examen de reprise, plus le prix des documents prescrits pour la préparation à l'examen dont le montant total est fixé par le Conseil.

Lors du dépôt de la demande d'inscription à une ou plusieurs sections de la Phase III du Cours de formation professionnelle (y compris les examens de chaque section), des frais de scolarité dont le montant est fixé par le Conseil.

### INSCRIPTION ET ADMISSION

#### Exercice général

Inscription au Barreau et admission à titre de procureur ou de procureure des candidats et des candidates qui ont terminé le Cours de formation professionnelle ou qui ont fait une demande d'admission par voie de transfert aux termes de l'article 4 du Règlement 708 des Règlements refondus de l'Ontario de 1990, à verser au plus tard le dernier jour précisé par le bureau du registraire pour l'inscription à la Phase III ou, en cas de transfert, avec la demande déclenchant la procédure de transfert, des frais dont le montant est fixé par le Conseil.

Inscription au Barreau et admission à titre de procureur ou de procureure :

- a) des doyens et des doyennes de facultés de droit reconnues, à partir de leur deuxième année consécutive à ces fonctions;
- b) des membres à plein temps du corps enseignant de ces facultés de droit, à partir de leur troisième année consécutive à ces fonctions;

à verser au dépôt de la demande, des frais dont le montant est fixé par le Conseil.

EXERCICE OCCASIONNEL

Inscription au Barreau et admission à titre de procureur ou de procureure, pour agir en qualité d'avocat ou avocate dans une instance spécifique, à verser au dépôt de la demande, des frais dont le montant est fixé par le Conseil.

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

- (1) Copy of Appendix 2 re: Rules made under subsection 62(1) of the Law Society Act.

It was moved by Mr. Epstein, seconded by Mr. Carter that the Report be adopted.

Carried

THE REPORT WAS ADOPTED

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

The Treasurer and Benchers had as their guest for luncheon Professor Peter Hogg.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Adams, Armstrong, Backhouse, Carey, Carter, R. Cass, Chahbar, Cole, Cronk, Crowe, DelZotto, Eberts, Feinstein, Finkelstein, Gottlieb, Lawrence, MacKenzie, Martin, Ruby, Sachs, Swaye, Wardlaw and Wilson.

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IN PUBLIC

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Report of the Lawyers Fund for Client Compensation Committee

Mr. Ruby presented the Report of the Lawyers Fund for Client Compensation and spoke to the policy proposal for staff involvement in Compensation Fund claims authorization.

A colour graph was circulated to the Benchers setting out Claims Information at April 30th, 1998.

Report to Convocation

Purpose of Report: Decision Making and Information

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Lawyers Fund for Client Compensation Committee (the "Committee") met on May 14th 1998. In attendance were:

Clayton Ruby (Chair)

Ronald Cass  
Thomas Cole  
Harriet Sachs

The meeting was held jointly with the Professional Regulation Committee with Harriet Sachs in the Chair. Members of that Committee attending were:

Laura Legge  
Niels Ortvad

Staff: Lesley Cameron, Jonathon Fedder, Scott Kerr, David McKillop, Richard Tinsley, Jim Varro and Jim Yakimovich. From LPIC: Malcolm Heins and Caron Wishart.

2. This report contains:

- ◆ the Committee's policy proposal for staff involvement in Compensation Fund claims authorization;
- ◆ the Committee's information report on claims paid from the Lawyers Fund for Client Compensation since its last report in June of 1997.

STAFF INVOLVEMENT IN COMPENSATION FUND CLAIMS AUTHORIZATION

*A. NATURE AND SCOPE OF THE ISSUE*

3. At the September 1997 meeting of the Professional Regulation Committee ("PRC"), the following issue was confirmed for review by a working group:

Issue

Policy decision on whether staff, as opposed to benchers, can authorize payments from the Compensation Fund

Commentary

This issue was on the agenda of the November 28, 1996 meeting of the Governance Restructuring Implementation Task Force as part of a transitional proposal but has been deferred pending an opinion from Andrew Brockett on this and other matters. The policy/procedural discussion on this issue must take place in the context of what the relevant legislation and regulations provide.

4. A working group of the PRC was struck<sup>1</sup> and met to discuss these issues. It reviewed background material which focused largely on the discussions in the fall of 1996, at the time the new committee structure was implemented, on the future of the Lawyers Fund for Client Compensation Committee. Attached at Appendix 1 is an excerpt from the Governance Restructuring Implementation Task Force ("GRIT") Report to Convocation of September 27th 1996 which explains how the issue was framed.
5. In September 1996, Convocation agreed that, in the interim, the Committee should continue to exist and left the question, of a new approach to discretionary approval of grants by staff, to be determined.
6. Because of the regulatory focus, the issue eventually fell to the PRC for consideration.<sup>2</sup> In its review, the working group consulted with the Chair.
7. This report sets out the position of the Committee, after reviewing the working group's discussion paper, on the suggestion of staff authority in making grants under the Fund.

*B. BACKGROUND*

8. The *Law Society Act* gives Convocation the power to make grants from the Lawyers Fund for Client Compensation. It also permits Convocation to delegate its grant-making power to a committee of Convocation and/or referees and Convocation has delegated that power to the Lawyers Fund for Client Compensation Committee.
9. Appendix 2 contains the relevant legislative/rule authority respecting the administration of the Fund (*Law Society Act*, s. 51, s. 62(1)¶14; Rules 26 and 40).
10. Under the current scheme, grants are approved by the Review Subcommittee of the Lawyers Fund for Client Compensation Committee. The Subcommittee receives recommendations from staff lawyers, and, in contentious claims, from independent referees who are members of the Society, and if in agreement with the recommendations, approves the payment of the claims.
11. Both staff lawyers and referees may recommend a grant of up to \$100,000.00 (the current limit on claims), and staff lawyers have been given complete discretion by the Committee to make (not just recommend) grants of up to \$500.00.
12. In making their recommendations, staff settle the claim with the claimant and do not conduct a formal hearing. Contentious claims that do not settle are the subject of a formal hearing before an independent referee who makes a recommendation..
13. The Subcommittee, as a matter of practice, does not seek the approval of the full Committee before payment of the grants. The payments are reported by the Subcommittee to the Committee, which then reports to Convocation.

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<sup>1</sup>Marshall Crowe, assisted by staff David McKillop and Jim Varro.

<sup>2</sup>As information in this paper discloses, the issue was originally reviewed by the Governance Restructuring Implementation Task Force ("GRIT") but it deferred to the PRC's review.

14. Other members of the Committee act as an Appeal Subcommittee, hearing appeals from decisions of the Review Subcommittee if the claimant remains dissatisfied. The Appeal Subcommittee's decisions are, in practise, final.

*C. POLICY ISSUE*

Effect of the Policy Governance Model

15. When GRIT reviewed this issue, it engaged the assistance of Andrew Brockett, then the Society's director of research, and David McKillop, Assistant Secretary, Lawyers Fund for Client Compensation. Their work on the issue served as the basis for the working group's discussion.

16. In a draft memorandum prepared for GRIT in February 1997, Mr. Brockett and Mr. McKillop stated the issue as follows:

Under the Law Society's policy governance model, committees are not meant to undertake the sort of decision-making that has hitherto been the function of the Review Subcommittee of the Lawyers Fund for Client Compensation Committee.

Nor, under the policy governance model, is grant-making considered an appropriate function for Convocation - but, given the working of the *Law Society Act*, grant-making by Convocation is precisely what would have to happen if the Lawyers Fund for Client Compensation Committee were simply abolished.

17. This led to a series of suggested recommendations, summarized as follows:

- a. That the Lawyers Fund for Client Compensation Committee be discontinued;
- b. That Convocation delegate to named ("outside") referees and named staff lawyer referees (including a level of "senior staff lawyer referee") its power to make grants under subsection 51(5) of the *Act*, which is a delegation permitted under the *Act*;
- c. That grant-making authority be given to outside referees to the limit of \$100,000.00 and to staff of \$60,000.00;
- d. That two staff lawyer referees acting together have authority to make grants between \$60,000.00 and \$100,000.00;
- e. That outside referee decisions be final, and that staff lawyer referee decisions be final (and payment made) only if agreed to by the claimant; if no agreement is reached, the claim would be referred to an outside referee;
- f. That Convocation delegate to the members of the PRC the power to act as an appeal panel ("Lawyers Fund for Client Compensation Appeal Panel") to hear and finally decide appeals from decisions of outside referees.

18. In support of the recommendations, the following arguments were made by Mr. Brockett and Mr. McKillop (further elaboration of these appeared in their memorandum):

- a. Convocation would be able to monitor the exercise of the power it has delegated;
- b. Convocation can issue guidelines to the referees;

- c. Statistics show that, in most cases, both staff and referee recommendations are adopted by the Review Subcommittee
- d. Complex cases will continue to be the subject of formal hearings before outside referees;
- e. Benchers will decide appeals from decisions of outside referees;
- f. Precedents and rationale for permitting staff-lawyer referees to make grants;
- g. Efficiency;
- h. Natural justice.

#### The Working Group's Review

19. While the working group did not dispute some of the arguments in support of a new model giving staff (and outside referees) grant-making authority, the consensus was that a change from the current procedure was not warranted, for the following reasons:
  - a. While it was possible that the new system could promote some efficiencies, the case for change rested mainly on invoking the policy governance model rather than on convincing indications that the new system would be better;
  - b. Flowing from a., the system presently in place works. The grants are currently reviewed by two Committee members, and this does not present any significant problems for the work of the Committee although the members of the Review Subcommittee are left with the heaviest workload;
  - c. Staff (or outside referees) should not be the decision-makers in this scheme. Their recommendations should remain mere recommendations - not final decisions. Convocation delegated its statutory authority to the Committee and as the delegate of Convocation, the Committee fulfills the statutory mandate and matters are appropriately handled;
  - d. More specifically, benchers *must* make the decisions where the amount paid as grants, for example, for a series of claims relating to one lawyer (handled by one staff member, usually) may be large. All grants are discretionary, and it was felt that Benchers should continue to principally exercise that discretion.
20. The Committee agreed with the working group's conclusion not to propose a change in the process in accordance with the suggested model described in paragraph 17 above, or any variation thereof, however, it decided that a suggestion of the working group to raise the amount of discretionary grants made by staff to \$5,000.00 from \$500.00 would be appropriate.
21. Increasing the authority of staff to approve grants up to \$5,000 will significantly reduce the workload of the Review Subcommittee. Had this higher limit been in place during the last two years, the Review Subcommittee would have had to review 40% (1996/97) and 26% (1997/98) fewer grant recommendations. If approved, all grants, notwithstanding size, will continue to be reported to both the Committee and Convocation.

#### The Committee's Proposal

22. The Committee recommends:
  - with the exception of the suggested increase in the amount of grants authorized by staff, the Committee proposes that no change be made to the current scheme for authorization of grants. This would see the continuation of the Committee as the delegate of Convocation in fulfilling the Fund's statutory obligation;

- that the following staff lawyers be appointed as staff Referees for the purpose of paying grants, with the agreement of the claimant, from the Lawyers Fund for Client Compensation up to \$5,000:

Sara Hickling  
 Maria Loukidelis  
 David McKillop  
 Evan Shapiro  
 Heather Werry;

- that staff report back to the Committee in six months time with respect to the proposed \$5,000 staff approval scheme.

23. The Committee presents all options discussed for Convocation's consideration.

Decision for Convocation

24. Convocation must decide whether:

- a. to accept the Committee's proposal as set out in paragraph 22 above;
- b. to accept the Committee's proposal with amendments Convocation deems appropriate;
- c. to decide upon other options either discussed above or to be articulated by Convocation.

INFORMATION

*A. GRANTS PAID FROM THE COMPENSATION FUND*

25. The Committee wishes to advise Convocation that the following grants have been approved by the Review Subcommittee and have been or are in the process of being paid out:

REFEREE AND/OR COMPENSATION STAFF	SOLICITOR	NUMBER OF CLAIMANTS	TOTAL
C. A. Keith, Q.C.	Richard T. Johnston (Deceased April 22, 1993)	1	Nil
B.W. Grossberg, Q.C.	Paul D. Squires (Disbarred September 22, 1994)	1	\$30,000.00
Heather A. Werry	Solicitor #16 (Discipline Pending)	3	\$9,105.00
	Frank Arthur W. Ault (Disbarred October 28, 1997)	3	\$197,500.00
	Ritchie James Linton (Discipline Suspension 12 months - November 1, 1996)	1	\$5,000.00

29th May, 1998

REFEREE AND/OR COMPENSATION STAFF	SOLICITOR	NUMBER OF CLAIMANTS	TOTAL
	Chaim P. Bredin (Retired or Not Working December 31, 1996)	1	\$24,361.00
	Morris C. Orzech (Permitted to Resign April 15, 1996)	3	\$143,000.00
	Solicitor #20 (Suspended Non-Payment Fees November 1, 1996)	1	\$11,699.00
	Solicitor #23 (Suspended Non-Payment LPIC Levy - May 26, 1995)	1	\$3,000.00
	Solicitor #24 (Discipline Pending)	1	\$42,444.06
	Solicitor #26 (Suspended Non-Payment Fees May 1, 1997)	1	\$62,000.00
	Solicitor #31 (Suspended Non-Payment Fees December 31, 1995)	1	\$2,500.00
	Leonard Wratten (Deceased February 3, 1995)	1	\$9,365.91
	Frank Mott-Trille (Disbarred October 29, 1997)	8	\$327,500.00
	Burkhard R. Heder (Deceased May 15, 1996)	1	\$1,901.69
	George Struk (Disbarred November 23, 1995)	1	\$17,091.00
	Solicitor #33 (Suspended Non-Payment Annual Fees May 12, 1995)	1	\$1,691.00
	Solicitor #6 (Suspended Non-Payment LPIC Fees - December 15, 1997)	1	\$24,500.00
	Ian Thomas McEachern (Disbarred November 25, 1993)	1	\$24,000.00

29th May, 1998

REFEREE AND/OR COMPENSATION STAFF	SOLICITOR	NUMBER OF CLAIMANTS	TOTAL
	Robert Karfell (Deceased October 16, 1994)	1	\$1,591.00
	Roger L. Clark (Disbarred September 28, 1995)	1	\$17,000.00
Sara Hickling	John A. Sproule (Deceased August 19, 1994)	4	\$42,372.28
	Arnold Epstein (Permitted to Resign May 22, 1997)	1	\$76,135.24
	Peter D. Clark (Disbarred January 23, 1997)	2	\$4,250.00
	R. Noel Bates (Disbarred May 22, 1997)	1	\$6,954.00
	Byron D. Loney (Permitted to Resign June 27, 1996)	2	\$1,470.00
	Jeff Mark Levy (Disbarred June 22, 1995)	1	\$1,799.00
	Lee Edward Fingold (Disbarred January 25, 1996)	1	\$75,000.00
	David Michael O'Brien (Discipline Suspension February 22, 1996)	1	\$1,650.00
David McKillop	Paul Douglas Squires (Disbarred September 22, 1994)	10	\$243,912.50
	Sydney Ezrin (Deceased December 25, 1995)	1	\$3,648.75
Maria Loukidelis	Arnold Handelman (Disbarred January 23, 1992)	36	\$1,372,628.79
	Kenneth R. Bruce (Permitted to Resign November 27, 1997)	1	\$2,757.20
	Solicitor #15 (Retired or Not Working November 22, 1996)	16	\$750,062.11

REFEREE AND/OR COMPENSATION STAFF	SOLICITOR	NUMBER OF CLAIMANTS	TOTAL
	Philip Evans (Disbarred May 23, 1996)	2	\$1,710.00
	Sadrudin Jaffer (Disbarred April 24, 1997)	1	\$3,000.00
Evan Shapiro	Solicitor #29 (Suspended Non-Payment LPIC levy - September 27, 1996)	1	\$2,000.00
	Solicitor #1 (Discipline Suspension April 24, 1997)	2	\$3,225.00
David Sterns	Bernard Jacob Kamin (Discipline Suspension February 27, 1998)	1	\$5,000.00
	TOTAL GRANTS PAID	118	\$3,552,824.53

APPENDIX 1

EXCERPT FROM SEPTEMBER 27, 1996 REPORT TO CONVOCATION OF THE  
GOVERNANCE RESTRUCTURING IMPLEMENTATION TASK FORCE

APPENDIX 2

LEGISLATIVE AND RULE AUTHORITY FOR THE COMPENSATION FUND

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It was moved by Mr. Ruby, seconded by Mr. Crowe that the Report be adopted.

Carried

THE REPORT WAS ADOPTED

Report of the Professional Regulation Committee

Ms. Cronk presented the Report of the Professional Regulation Committee.

Report to Convocation

Purpose of Report: Decision-Making and Information

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on May 14, 1998. In attendance were:

Harriet Sachs (Acting Chair)

Gavin MacKenzie (Vice-Chairs)  
Niels Ortved

Gary Gottlieb  
Laura Legge

Lawyers Fund for Client Compensation Committee members (for joint meeting on two issues):

Clayton Ruby (Chair)

Ronald Cass  
Thomas Cole  
Harriet Sachs

Staff: Lesley Cameron, Jonathan Fedder, Scott Kerr, David McKillop, Richard Tinsley, Jim Varro, Jan Walker, Jim Yakimovich

Malcolm Heins, Caron Wishart (LPIC)

2. This report contains the Committee's
- ◆ policy reports on:
    - proposed amendments to Rule 13, Commentary 10 of the Rules of Professional Conduct (reporting matters to LPIC);
    - disclosure of formal complaints;
    - amendments to the Protocol for Complainants in the Complaints and Discipline Process;
    - proposed guidelines for retention and oversight of outside counsel engaged by the Law Society for professional regulation matters<sup>1</sup>;
  - ◆ information reports on:
    - review of Rule 13, Commentary 6 of the Rules of Professional Conduct (duty to meet financial obligations);
    - staff involvement in Compensation Fund claims authorizations

LPIC ISSUES -  
JOINT MEETING WITH THE  
LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

*A. NATURE AND SCOPE OF THE ISSUE*

3. The Committee reviewed the report of its working group<sup>2</sup> struck at its October 1997 meeting to review issues relating to the intersection of lawyers' obligations to LPIC and the Society's regulatory scheme.
4. The issue was defined in the Committee's issues list for 1997-98 as follows:
- |                   |   |
|-------------------|---|
| <u>Issue</u>      | Policy discussion on authorization for disciplinary action for non-reporting of claims to LPIC to the detriment of clients, and failure to comply with LPIC filing requirements.                          |
| <u>Commentary</u> | The Rules state the lawyers should report potential claims to their insurer, but there is no mandatory requirement, and thus the issue becomes whether non-reporting should be the subject of discipline. |
5. The working group also reviewed the manner in which information is referred to LPIC from the Law Society about a lawyer's failure to report and LPIC's use of that information.
6. The working group sought input from Clayton Ruby, Chair of the Lawyers Fund for Client Compensation Committee, senior staff in the Compensation Fund Department and Malcolm Heins, president of LPIC. The working group's paper focused largely on whether a change to the Society's current requirement that lawyers "should" notify LPIC of potential negligence claims, as opposed to mandating the reporting, is necessary.

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<sup>1</sup>Reported as information in the Committee's April 9, 1998 report to April 24 Convocation.

<sup>2</sup>Ross Murray, Marshall Crowe and non-Committee member Abe Feinstein, assisted by staff Cathy Riches, Jim Varro and Caron Wishart (LPIC).

7. On the agreement of Mr. Ruby and the Chair of the Professional Regulation Committee, a joint meeting of the Committee and the Lawyers Fund for Client Compensation Committee was held to discuss common issues and decide on the issue of mandatory reporting.

*B. BACKGROUND*

Notification of Claims to LPIC by the Law Society

8. Prior to 1994, staff in the Law Society's Complaints Department would routinely refer to LPIC (and its predecessor department) matters arising from complaints to the Society which disclosed an allegation of negligence on the part of the lawyer. In most cases, LPIC would open a claims file.
9. As part of the response to and resolution of the insurance crisis which arose in 1994, it was decided by LPIC that these referrals, which had the effect of inflating the insurer's costs, would no longer be accepted as the basis of insurance claims. LPIC's position was, and still is, that a lawyer must report the claim in accordance with his or her obligations under the insurance policy.
10. The LPIC policy itself requires lawyers to report instances of negligence whereby LPIC may be responsible for a claim payment.<sup>3</sup> If no report is made, despite LPIC's efforts to obtain the member's report, the Law Society is in a position to report the matter to LPIC under the terms of the policy. However, even if the Law Society reports the matter to LPIC, the act of reporting does not necessarily require LPIC to conduct the defence of an action or provide coverage as if the insured co-operated with LPIC or in defence of the claim.<sup>4</sup>
11. This approach served LPIC's purposes and facilitated an appropriate reporting scheme from an insurance perspective.
12. With respect to issues arising from complaints investigations which appeared to warrant review by LPIC, complaints investigators would routinely advise members, when appropriate, that they should report a potential claim to LPIC and refer to the Rule 3, Commentary 10, which states that

The duty to give honest and candid advice requires the lawyer to inform the client promptly when the lawyer discovers that a mistake, which is or may be damaging to the client and which cannot readily be rectified, has been made in connection with a matter for which the lawyer is responsible. When so informing the client, the lawyer should be careful not to prejudice any rights of indemnity which either of them may have under any insurance, client's protection or indemnity plan, or otherwise. At the same time, the lawyer should recommend that the client obtain legal advice elsewhere as to any rights the client

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<sup>3</sup>This does not preclude LPIC from contacting the lawyer and asking if he or she would report the matter, and even going to extensive lengths to advise the lawyer to put LPIC on notice under the policy provisions.

<sup>4</sup>This is the case in all but the most unusual cases. If a lawyer is subject to a trusteeship, or has left the jurisdiction, for example, LPIC will attempt to access the relevant files and will determine if a claim can be paid.

may have arising from such mistake. *The lawyer should also give prompt notice of any potential claim to an insurer or other indemnitor so that the client's protection from that source will not be prejudiced and, unless the client objects, assist and co-operate with the insurer or other indemnitor to the extent necessary to enable any claim which is made to be dealt with promptly.* If the lawyer is not so indemnified, or to the extent that the indemnity may not fully cover the claim, the lawyer should expeditiously deal with any claim which may be made and must not, under any circumstances, take unfair advantage that would defeat or impair the client's claim. In cases where liability is clear and the insurer or other indemnitor is prepared to pay its portion of the claim, the lawyer is under a duty to arrange for payment of the balance.

(Emphasis added)

13. In direct response to the 1994 developments, however, a process was implemented whereby Complaints Department investigatory staff refer to the Chair and Vice-Chairs of Discipline any matter which they believe should be reported to LPIC, where the member did not or refused to report, with the recommendation that it be reported to LPIC through the Chair and Vice-Chairs.
14. While this indicated that the Society was taking responsibility for referring information to LPIC in the appropriate cases, as noted above, such a report to LPIC is notice of a potential claim only. If the member still refused to co-operate and provide information and file contents, the insurer was prejudiced and unable to properly defend or resolve the matter.
15. As there were concerns expressed that this may be inconsistent with the intent, from the public interest perspective, of a compulsory universal coverage scheme for members of the Law Society, discussions between the Law Society and LPIC took place. The Society learned through Malcolm Heins, president of LPIC, that in nine cases out of ten, where the Chair and Vice-Chairs of Discipline or the Complaints Department referred matters to LPIC, the lawyer followed up with a report to LPIC.
16. As such, the incidence of a lawyer not reporting a matter, and thus potentially triggering the discipline track for that misconduct on the basis of a Rule 3 breach, appeared to be limited.
17. At the same time, however, cases arose where the lawyer refused to report a claim to LPIC and litigation was commenced by clients. In one case, judgment was rendered against the lawyer in favour of the client,<sup>5</sup> but the lawyer still refused to put LPIC on notice. The potential for serious prejudice to clients was realized in some of these cases.
18. These events renewed concern about the obligations on the lawyer both under the LPIC policy and through the rules of conduct, and emphasized the need to review the Society's response to these situations given the mandatory reporting requirement in LPIC's policy.
19. The issue should be understood in the context of the number of situations arising where lawyers refuse to co-operate with LPIC or fail to report, to the prejudice of clients. Based on information from both LPIC and the Law Society, it would appear that there may be fewer than five cases a year which fall into this category.

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<sup>5</sup>The lawyer in this case is appealing.

Recent Developments

The Lawyers' Fund for Client Compensation Initiative

20. The Society's Lawyers' Fund for Client Compensation Committee recommended to Convocation that the general guidelines for the determination of grants under the Compensation Fund be expanded to cover claims denied under LPIC's policy as a result of a member's acts intended to prejudice the claimant's efforts to obtain compensation. This was adopted by Convocation on November 28, 1997. Thus, the definition of "dishonesty" for the purposes of a Compensation Fund claim was expanded.
21. A copy of the Compensation Fund Committee's report is attached at Appendix 1 .
22. Through this initiative, LPIC's advice to the Law Society about these situations can be referred to the Compensation Fund for review, and as a matter within its discretion, compensation may be paid to aggrieved clients.
23. Given that development, a "gap" in the compensatory scheme for clients prejudiced by a lawyer's actions was filled.

LPIC's Innocent Party Coverage

24. On September 26, 1997, Convocation adopted LPIC's Report to Convocation which included, *inter alia*, a recommendation that

The LSUC/LPIC policy coverage be broadened to provide 'innocent party' protection for those who have suffered damages by reason of dishonest, fraudulent, criminal or malicious acts or omissions of an insured member practising without partners, associates or employed lawyers, in the performance or failure to perform professional services (as defined in the policy) for others.

25. The recommendation also included the following with respect to that coverage:

For the purposes of this sublimit cover the Law Society be permitted to report these claims to LPIC and that LPIC agrees to waive its right to rely on the insured member's breach of policy condition, where the insured fails to give notice of a claim, at all or in a timely fashion, with regard to this coverage or fails to co-operate with LPIC in the investigation or defence of the claim.

For the purposes of this sublimit cover LPIC agrees to accept notice of a claim under the policy directly from the claimant where the same has not already been reported by the insured lawyer under the policy.

26. The relevant excerpt from LPIC's report on this subject is attached as the last document at Appendix 1.
27. While LPIC will make the determination on which lawyers are eligible for the coverage, this will to an extent address certain situations where individuals may otherwise have had no recourse to the insurance fund.

*C. POLICY DISCUSSION*

The Question of Mandatory Reporting

28. Through the initiatives of the Compensation Fund and LPIC's innocent party coverage, steps have been taken to address the concern arising from the failure of a lawyer to report potential claims to LPIC.

29. However, the Committees recognized that a "gap" may still exist which bears on the efficacy of the reporting requirement in Rule 3, Commentary 10. For example, a lawyer's actions may trigger a claim to and payment from the Compensation Fund where no finding has been made that the reporting rule has been breached, and where the dishonest conduct triggering the Fund's involvement has more to do with a breach of LPIC's policy than with a violation of the rule.
30. The Committees decided that if there is a need to in effect "harmonize" the Society's approaches in the regulatory, insurance and compensatory realms, the question was whether it would be appropriate to amend Rule 3, Commentary 10 to make the reporting requirement mandatory.

#### Why Lawyers Do Not Report

31. Based on the Law Society's experience with the small number of lawyers who have refused to report claims to LPIC, the reasons for refusing to report include the following:
- e. A lawyer may believe that his or her defence to an action will succeed based on the lack of merit to the client's claim, and chooses not to involve the insurer;
  - f. A lawyer may believe that his or her assets will cover any liability arising from the client's success in a lawsuit, and chooses not to involve the insurer;
  - g. The claim is below the lawyer's LPIC deductible;
  - h. A lawyer may be bankrupt, but still practising law, and may not wish to report a claim to LPIC because he or she can shelter behind the bankruptcy; if the claim has merit, it may mean an increased LPIC levy;
  - i. A lawyer may believe that the client, although threatening litigation, will never sue;
  - j. A lawyer may be judgment proof, and not care whether the claim is reported to LPIC or not;
  - k. A lawyer may be acting maliciously in attempting to defeat the client's claim.

#### LPIC's Position

32. An article in the Summer 1997 issue of *LPIC News*, which discusses the provisions of Rule 3, stated that
- Underlying all of these requirements [of Rule 3, Commentary 10] is the lawyer's *obligation* under the rule to ensure that neither the client's nor the lawyer's rights of indemnity are prejudiced by the lawyer's actions. [emphasis added]
33. The article goes on to say that failure to meet the reporting requirements under the contractual obligation in the policy "could result in potential discipline proceedings, and forfeiture of insurance coverage under the policy."
34. Mr. Heins confirmed that LPIC treats the reporting requirement in the Rule as if it were in fact mandatory, with reliance on the words in the first sentence of Commentary 10 above (a lawyer "must" advise a client of an error, and by analogous interpretation, the insurer).
35. The fact of a report does not automatically mean that LPIC will, for example, hire counsel to deal with the claim and/or litigation that arises from the client's pursuit of an action against the lawyer. Often, where the amount of the claim upon which a client would sue is below the deductible or is within the jurisdiction of the Small Claims Court, LPIC and the lawyer can agree that the lawyer will deal with the matter himself or herself.
36. In these situations, LPIC may still be exposed to a claim and the lawyer must act pursuant to the policy provisions in co-operating with the insurer. Rule 3 Commentary 10 states that lawyers should assist and co-operate with the insurer.

The Law Society's Position

37. As a matter of professional conduct, a formal discipline complaint can be laid in circumstances where a lawyer has not reported a matter to LPIC and has prejudiced the client's rights of indemnity through LPIC.
38. The Society has successfully prosecuted lawyers for breach of the current reporting requirement, usually in tandem with other failure to serve allegations.
39. It is apparent now that in some circumstances, the lawyer's conduct will lead to both a discipline hearing and assessment of a claim against the Compensation Fund, although it is anticipated, as noted above, that a determination may be made that a Fund claim will be paid without first requiring that disciplinary action occur.

The Effect of a Change to a Mandatory Requirement

40. The Committees felt that a change from the apparent permissive reporting requirement to a mandatory scheme would be consistent with LPIC's policy provisions and with the philosophy behind the amendment to the "dishonesty" threshold for Compensation Fund claims. It would also establish in the clearest terms that non-reporting can be grounds for a finding of professional misconduct.
41. A mandatory scheme may also serve to enhance the Society's public regulatory response in those cases where discipline for failure to report is appropriate and more precisely define the basis upon which referrals to LPIC by the Law Society through the Chair and Vice-Chairs of Discipline are made.
42. LPIC's advice to the Law Society to confirm that a lawyer had not reported a claim would be required in those situations where the lawyer, although requested to do so, does not disclose to the Society, for whatever reason, whether or not he or she has reported a matter to LPIC.<sup>6</sup>
43. The Committees were mindful that the overwhelming majority of lawyers either report claims to LPIC, discuss the necessity of reporting claims with LPIC, or report after the Law Society advises them to do so pursuant to the current reporting requirement or after referral of matters from the Chair and Vice-Chairs of Discipline.
44. However, the Committees believed that a mandatory reporting scheme would
  - give the Society a clearer mandate to discipline lawyers who do not report, and
  - mirror the contractual requirement in the LPIC policy. The policy currently requires lawyers to provide LPIC with notice of every claim, which is a defined term in the policy<sup>7</sup>, including those below the lawyer's deductible and those of questionable merit resulting from vindictive actions of clients.

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<sup>6</sup>Even without a mandatory scheme, this information from LPIC is necessary for investigators to conclude the issue of and decide on further action for failure to report, on the basis of Rule 3, Commentary 10.

<sup>7</sup>A claim is defined as (i) a written or oral demand for money or services; or (ii) a written or oral allegation of breach in the rendering or failure to render professional services, either of which are received by the insured resulting from a simple or related error, omission or negligent act in the performance of or failure to perform professional services. Lawyers are required under the policy to give notice of "any circumstance which any reasonable person or firm would expect to subsequently give rise to a claim...".

Other Measures

45. Beyond a change to the rules of conduct, the Committees felt that other initiatives should be pursued to ensure that, as a matter of the public interest, the Society is doing all it can to address circumstances where clients are prejudiced by the failure of lawyers to comply with LPIC's policy requirements and the Society's ethical guidelines.
46. The Committees acknowledged that the need for a "captive" insurer for members of the Society is in recognition of the broader role of the Law Society in seeing that adequate insurance is available for lawyers at a reasonable cost for the ultimate benefit of the consumers of legal services.
47. To this end, the Committees proposed that LPIC and the Law Society explore whether there are others ways for LPIC to accept information for claims assessment where lawyers do not report.

The Committee's Proposals

48. The Committee proposes that:
  - a. Rule 3 Commentary 10 be amended to make the reporting requirement to LPIC mandatory;
  - a. that LPIC and the Law Society consider whether there are others ways for LPIC to accept information for claims assessment in the absence of a report from a lawyer.
49. If Convocation agrees that a rule amendment is appropriate, the Committees propose that staff be instructed to prepare the text of the amendment for review by the Committees for Convocation's approval.
50. Options for Decision by Convocation

Convocation should decide:

- a. If a rule amendment is appropriate;
- b. If a rule amendment is not appropriate, what, if any, decision should be made to address the issue;
- c. Whether it agrees that further discussions with LPIC respecting claims notification should take place.

DISCLOSURE OF FORMAL COMPLAINTS

*A. NATURE OF THE ISSUE*

51. The Committee, as a result of an Law Society initiative to development a media policy, was requested to review the question of when a disciplinary complaint becomes a matter of public record.
52. It was determined that there was a need to define a policy in this area, given the requests for information which are made from time to time to the Society by the media, and complainants, about a particular matter.
53. The Committee, having reviewed the current practice and earlier policy discussions, has essentially formulated a refinement to the existing policy for Convocation's consideration.

*B. BACKGROUND*

Current Practice

54. In the current procedure, once a formal complaint is referred to at a Hearings Management Tribunal or marked as an exhibit at a discipline hearing, it is a matter of public record, given that hearings are public.

55. The question is what should occur prior to some form of public reference to the complaint, either before a hearing has begun or, at an earlier stage, after the formal complaint has been sworn but before service on the lawyer, when information is requested.
56. Most formal complaints are served by registered mail at the lawyer's last known address, one of the permitted forms of service under section 33(13) of the *Law Society Act*. This results in delay, at times of some considerable length, between the mailing and receipt by the lawyer. Further delay is experienced before the Law Society knows whether a complaint has been picked up by the lawyer, evidenced by the Society's receipt of a signed or unsigned Acknowledgement of Receipt of a Registered Item card.
57. For a variety of reasons, the lawyer may never receive the complaints, for example, because the last known address is not current or the lawyer is not picking up registered mail.

#### Past Policy Consideration

58. Attached at Appendix 2 is an excerpt from the final report of the Special Committee on Discipline Procedures (the Yachetti Committee) in September 1990.
59. The Yachetti Committee, in summary, determined that at any time after authorization of a formal complaint, the complaint should be made available to the public upon request.
60. In 1992, the Discipline Policy Committee reviewed the procedure recommended by the Yachetti Committee and adopted by Convocation respecting notice to the media of disciplinary proceedings, which is part of the above excerpt. While the policy in this respect was debated at Committee and Convocation over a period of three months from March to May, 1992, it resulted in confirmation of the Yachetti Committee's original recommendation.
61. The Committee learned that, subsequently, a refinement to the above policy was made, in that the complaint would only become a public document once it was served.

#### C. POLICY DISCUSSION

##### The Options

62. The Committee considered a number of options for the timing of public disclosure of formal complaints, including:
  - a. Making the formal complaint a matter of public record at the time it is sworn or affirmed;
  - b. Making the complaint a matter of public record at some date after it is sworn or affirmed, such as:
    - i. Once the registered mail has been signed for;
    - ii. Once reasonable efforts, such as telephone calls, have been made to give actual notice to the lawyer;
    - iii. At the time of the first set date;
    - iv. Following some period of time within which the solicitor is deemed to have been served.
63. The Committee considered that while a. above was a simple, open procedure, the disadvantage is that public disclosure may occur before the lawyer involved knows that a complaint has been issued (although in virtually every case, there has been ongoing communication with a lawyer, or at least attempts to communicate, within the investigation, such that there would be some awareness on the lawyer's part about the direction of the matter).
64. The Committee also felt that some of the approaches in b. would not allow for a timely response to inquiries from the public or the media about the status of a matter.

The Committee's Proposal

65. The Committee determined that it would be appropriate to build on the existing policy, and refine further what was previously determined to be acceptable.
66. Accordingly, the Committee suggested that disclosure not be made until after a certain number of days after the mailing of the registered letter, which would in effect be a period within which the lawyer would be deemed to have been served (if actual notice of service has not been received by the Society).
67. Considering the facility of registered mail, it was decided that 10 days was an appropriate time period, after which public disclosure could be made of the fact of the sworn complaint.
68. The Committee believes that this will provide for a reasonable time period for deemed notice of the formal complaint to a lawyer, while facilitating a reasonably timely response to public inquiries about the fact of a formal complaint.

Decision for Convocation

69. Convocation should decide whether:
  - a. The proposed policy is acceptable;
  - b. Amendments to the proposal are required, and if so, what they should be.

"PROTOCOL" FOR THE INVOLVEMENT OF COMPLAINANTS IN THE LAW SOCIETY'S COMPLAINTS  
AND DISCIPLINE PROCESSES -  
CONSIDERATION OF ISSUES ARISING FROM CONVOCATION/COMMITTEE

*A. NATURE OF THE ISSUES*

70. On November 28, 1997, Convocation adopted the Committee's proposed protocol for complainants' involvement in the Society's investigatory and discipline processes with two amendments:
  - Clarifying that professionalism and courtesy must be exercised by *all* individuals employed or retained by the Society who are involved in the process, and
  - With respect to languages other than English, stating that French shall be used when requested by a complainant and that the Society use its best efforts to deal with a complainant in other languages if requested.
71. Convocation also directed that the Committee review the following four issues, which were identified in the debate prior to adopting the protocol:
  - Production of an instructional videotape on the investigatory/discipline processes, similar to that used by the College of Physicians and Surgeons of Ontario;
  - Exploring methods of receiving complaints other than in writing, through the use of audiotapes, for example;
  - Review of time frames for investigations;
  - Drafting a protocol for lawyers involved in the regulatory process.
72. Another issue was identified at the Committee's February 1998 meeting. At that time, the Committee reviewed an exchange of correspondence between a member of the Law Society and the Chair concerning an issue arising from the publication of the protocol.

73. The member raised two related issues, one concerning the nomenclature used to describe some complainants as "victims" (in relation to the victim impact statement provision of the protocol) and the intended or implied purpose of that description, and the other relating to how that "label" or the perceptions surrounding it may impact on the process in terms of allowing a meaningful and proactive role for a complainant in the process.
74. The Committee referred all of the above issues to the working group<sup>8</sup> which originally prepared a draft of the protocol for the Committee, and at its May meeting reviewed the working group's report on these issues.

*B. DISCUSSION*

*Instructional Video/Time Lines for Investigations*

75. The Committee agreed that there was merit in producing a videotape, for both lawyers and complainants. This videotape would show what the investigation and discipline process entails, and would be a useful educational tool.
76. The Committee suggests, however, that production of the videotape be deferred until such time as the operational reorganization, as a function of the Project 200 initiative, has been completed.
77. As a result of Project 200, the proposed manner in which investigations in particular will be conducted, and the various streams that will become an integral part of the process, including enhanced intake/ resolution and ADR features, will change the face of the process such that it would not make sense to produce a videotape that would become obsolete virtually at the time of its release.
78. While the proposal is to defer production of the videotape, in the interim, the Project 200 Project Leader, Gemma Zecchini, should be apprised of the idea of the videotape. The production of an interactive feature along these lines on the Law Society's website illustrating the process could also be considered. The time available between now and the realization of the Project 200 redesign could be used to cost the production of a videotape, so that the Committee will be in a position to provide information to the Finance Committee for the required financial impact analysis.
79. The effect of Project 200 must also be considered on the issue of establishing time lines for investigations.
80. A specific focus of the Project 200 regulatory redesign is to build into the process efficiency and timeliness in completion of investigations. Project 200 expects to establish time frames for certain investigatory functions. Many factors will contribute to achieving that goal, and two of the most important are human resources and technology.
81. The interdependence of these and other factors requires that all parts of the redesign, including those relating to time frames for investigations, be dealt with within the whole and not piecemeal. The redesign is moving forward and changes are occurring on a regular basis.
82. It is suggested, therefore, that the issue of time lines for investigations as a feature of the protocol referred on to the Project 200 Regulatory Redesign Team Leader, Scott Kerr, as a matter raised in the context of the protocol, with recognition from the Committee that, as already planned, it be considered as part of the implementation of the redesign. The issue can be revisited for the purposes of the protocol once time frames within the redesign have been more precisely defined.

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<sup>8</sup>Gavin MacKenzie, Hope Sealy, and staff members Lesley Cameron, Jon Fedder, Jim Varro and Sheena Weir.

### Alternative Methods of Accepting Complaints

83. Current practice in the Complaints Department is to accept complaints from complainants in the form of an audiotape or videotape, if that is how the complaint is referred to the Society. The protocol as drafted indicates that the Society will assist a complainant in recording a complaint. The word "recording" was used as a synonym for "documenting" and did not refer to recording in the context of an audiotape.
84. The Committee reviewed whether the Society should accept complaints by telephone. This issue raises concerns about the integrity of the information-gathering function of the Society at the complaints intake stage. The Committee considered that requiring written or taped complaints is an important safeguard for the process. It did not endorse the general idea of accepting complaints by telephone.<sup>9</sup>
85. Accordingly, the Committee suggests that the protocol be amended by adding language to the effect that the Society will accept audiotapes or videotapes documenting a complaint.

### The Lawyer's Protocol

86. The discussion at Convocation on this point was framed in terms of what information is available to lawyers about their "rights" when a complaint is made, and the need for a protocol to enable lawyers to understand the system and processes with which they may become involved.
87. It was noted in the debate that a policy of Convocation on disclosure applies to discipline proceedings, and that the Rules of the Discipline Hearing Process codify the procedures applicable to hearings. It was recognized, however, that there are policies which have not been "tied together" in the same way as has been done through the complainant's protocol.
88. While the Committee as a matter of principle agreed that a document informing lawyers about the process and policies relevant to it would be useful, it considered the following:
- the fact that a number of issues about lawyers' involvement in the process were raised at the recent "round table" discussion meeting. Some of those issues mirrored the discussion at Convocation in terms of the need to collect policies and make them available in a usable and understandable format. Other issues raised at the round table touched on delay in the process and the manner in which lawyers, at least as a matter of perception, are treated by the Society from time to time;
  - the impact, once again, of Project 200 on the procedures relating to the Society's interaction with lawyers in the process. This encompasses everything from the nature/method of the communications to the timeliness of investigations to changes in how prosecutions may be approached (one example is the suggested discipline default track);
  - the difference between the status of lawyers and complainants in the process. While complainants may find that a protocol for themselves is informative and beneficial, lawyers, unlike complainants, are parties to the process, and have certain procedural and legal rights arising from the process (procedures, as noted above, have been codified in the Rules of the Discipline Hearing Process, provided to all members in discipline). Developing and publishing a protocol, the scope of which has not yet been determined, may lead to concerns about the effect such a document has on those rights. For example, could a protocol augment or narrow such rights? The potential for resulting procedural or legal complications was of concern to the Committee.

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<sup>9</sup>It is recognized that many telephone inquiries routed through the Complaints Department may include an element of complaint, but other than in those cases where a caller can be dealt with summarily or the matter is a "one off" issue, complaints are still requested to be forwarded to the Law Society in writing.

89. For these reasons, the Committee determined that while efforts would be made to follow up on the issues raised at the round table, noted above, the drafting of a lawyers' protocol should be deferred pending this follow up and further consideration of the purpose, scope and effect of such a document.

Issues Raised by A Member of the Law Society

90. The exchange of correspondence between the Chair and the member reviewed by the Committee focused on the member's experience with another regulatory body in the complaints and discipline process.
91. It was the member's opinion, in response to that experience and an assessment of the Law Society's complainants' protocol, that in terms of participation in the process, there was limited utility to a victim impact statement. The member's wish was to achieve a meaningful and respectful level of participation in the process *before* consideration of the disciplinary disposition of the matter, and not an opportunity to talk about how the error which led to making the complaint and the subsequent discipline had impacted on the member's life.
92. The member also opined that when someone is cast as "victim" they are typically seen not as equally entitled participants in the process but as disadvantaged. To the member, this is an indication of our attitudes toward complainants which forms the foundation of behaviours, protocols and processes.
93. The Committee recognized that the member's concerns focused on issues relating to both "victim" and "impact".
94. In examining the 1992 "victim impact" policy, which Convocation affirmed as part of the complainant's protocol, the Committee acknowledged that the Law Society through that policy was establishing a method by which a complainant could provide evidence of the impact of a lawyer's conduct on his or her life. In that sense, the words "victim" and "impact" were appropriate terms, as they essentially related to the effect, including the harm, caused to the complainant because of the misconduct. The policy was not intended to give the complainant the right to make direct submissions on the disposition of a matter or the penalty to be imposed.
95. The Committee felt that the member's suggestion may approach the threshold of making the complainant a party to the process, which was the intention neither of Convocation's earlier policy nor that of the protocol.
96. While there was merit to enhancing the complainant's involvement in the process, the Committee did not feel that it would be appropriate for a complainant to be given anything approaching standing to make direct submissions on the disposition of the matter.
97. The Committee determined, however, that it would be appropriate to add language to the protocol to indicate the Society's willingness to obtain from the complainant, at an early stage in the prosecution, his or her expectations of the results of the hearing process. This would give the complainant an opportunity to articulate what he or she would like to see happen, to at least put those expectations on the table. There would be no obligation on the Society to either act on what is said or provide any assurance to the complainant that what he or she wishes will in fact happen. This may provide the Society, through discipline counsel, with an opportunity to dispel any unrealistic expectations of the complainant.
98. With the above amendment, the protocol will allow those complainants who do not see themselves as "victims" to express their thoughts on what they feel the process should achieve, while ensuring that complainants who have, in fact, felt victimized by lawyers have the opportunity, through the victim impact statement procedure, to make representations to a discipline committee about their experiences.

Summary of the Committee's Proposals

99. The Committee proposes:
- a. amendments to the complainant's protocol, which appears at Appendix 3, with the amendments shown in boldface type, to reflect:
    - i. Acceptance of audiotapes or videotapes which document complaints; and
    - ii. Providing an opportunity for a complainant to express his or her expectations or desires respecting the outcome of the discipline process;
  - b. Deferral of production of an instructional videotape;
  - c. Deferral of consideration of timelines for investigations;
  - d. Deferral of the drafting of a lawyers' protocol.

Decision for Convocation

100. Convocation should decide whether:
- a. To adopt the amendments to the protocol in the form proposed by the Committee, or as amended by Convocation;
  - b. To affirm the decisions made by the Committee as set out in paragraph 99 above, b., c. and d.

GUIDELINES FOR RETENTION AND OVERSIGHT OF OUTSIDE COUNSEL INVOLVED IN PROFESSIONAL  
REGULATION MATTERS  
FOR THE LAW SOCIETY

A. NATURE OF THE ISSUE

101. In the fall of 1997, Convocation approved the creation of the Litigation Committee, the proposed mandate of which was, *inter alia*, to establish an oversight process for outside counsel engaged by the Law Society, as required, for various matters of litigation involving the Law Society.
102. It was determined that because of the possibility of an appearance of or actual conflict in benchers overseeing the retention and activities of outside counsel in matters connected with the regulatory process that may come before Discipline Convocation, an oversight role should be specifically designated through guidelines for staff, within the office of the Law Society's Secretary, with the involvement, where necessary, of the Chair of Discipline.<sup>10</sup>
103. This cross-over between the Litigation and Professional Regulation Committees as a result of matters within the regulatory process for which outside counsel are engaged prompted the Professional Regulation Committee to initiate the drafting of guidelines specifically for the retention and oversight of counsel involved in such matters.
104. These draft guidelines served as the "template" for the general guidelines which have been drafted by the Litigation Committee for presentation to Convocation this month. The guidelines which follow in this report are presented to Convocation for approval with the Litigation Committee's general guidelines (contained in its separate report).

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<sup>10</sup>The Chair and Vice-Chairs of Discipline, who also constitute the Discipline Authorization Committee (and who, with one exception, are also the Chair and Vice-Chairs of the Professional Regulation Committee), do not sit in Discipline Convocation on the matters which they authorized for disciplinary action.

### The Committee's Draft

105. The draft guidelines proposed by the Committee<sup>11</sup> which follow below include an introductory section which explains the purpose and scope of the guidelines. In large part, the guidelines, as stated in the Introduction, respond to the need to "communicate to [the Law Society's] outside counsel uniform guidelines setting forth its expectation for the effective and cost-efficient handling of regulatory matters, including litigation, on its behalf."
106. The guidelines cover the following areas:
- circumstances in which outside counsel must/may be retained;
  - who exercises the authority to retain outside counsel;
  - the conditions of the retainer;
  - a mechanism for approval of accounts of outside counsel;
  - co-ordination of activities of outside counsel, which essentially outlines the monitoring function of the Law Society;
  - fees and billing arrangements; and
  - what constitutes acceptance of the guidelines by outside counsel.
107. A draft "Agreement for Performance of Legal Services" to be executed by all outside counsel retained for regulatory matters is appended to the draft guidelines.
108. The following are the Committee's draft guidelines:

## GUIDELINES FOR RETENTION AND OVERSIGHT OF OUTSIDE COUNSEL REPRESENTING THE LAW SOCIETY OF UPPER CANADA IN PROFESSIONAL REGULATION MATTERS

### I. INTRODUCTION

In recognition of the mandate of the Law Society of Upper Canada (the "LSUC") to govern the legal profession in Ontario in the public interest, and in response to the ever-increasing cost of professional regulation matters including litigation, it is incumbent on the LSUC to communicate to its outside counsel uniform guidelines setting forth its expectations for the effective and cost-efficient handling of regulatory matters, including litigation, on its behalf. The LSUC's primary goal, of course, is to ensure that the LSUC continues to receive excellent legal representation, but it must also request that outside counsel retained on its behalf assist the LSUC in ensuring timely and accountable provision of legal services and in avoiding duplicative or unnecessary expenses.

These Guidelines, therefore, provide guidance as to the LSUC's requirements of outside counsel retained on its behalf on professional regulation matters. These Guidelines apply to all retainers of outside counsel by the LSUC in respect of professional regulation matters and are supplementary to and form part of the attached Agreement for Performance of Legal Services to be entered into by the LSUC and outside counsel retained by it.

### II. APPLICATION

Without limiting the generality of the foregoing, these Guidelines apply to counsel retained by the LSUC to provide advice, opinions or assistance on, investigate or prosecute matters or act on or respond to judicial review applications and appeals coming within the jurisdiction of the Professional Regulation Committee of the LSUC (the "PRC").

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<sup>11</sup>The Chair wishes to thank Richard Tinsley who provided considerable assistance in the drafting of the proposed guidelines.

III. CIRCUMSTANCES IN WHICH OUTSIDE COUNSEL SHALL BE RETAINED

Outside counsel shall be retained pursuant to these Guidelines:

- (a) to investigate complaints made against Benchers or members of the LSUC staff save and except where, with the prior written approval of the Chair of the PRC, LSUC staff are authorized to deal with the matter; and
- (b) to prosecute complaints of professional misconduct or conduct unbecoming authorized against a Bencher or member of staff of the Law Society.

IV. CIRCUMSTANCES IN WHICH OUTSIDE COUNSEL MAY BE RETAINED

Outside Counsel may be retained pursuant to these Guidelines:

- (a) to act on or respond to applications for judicial review or appeals in relation to professional discipline proceedings before the LSUC; or
- (b) in such other circumstances as the Chair of the PRC directs.

V. AUTHORITY TO RETAIN OUTSIDE COUNSEL

All outside counsel retained by the LSUC pursuant to these Guidelines will be retained by the Secretary of the LSUC in consultation with the Chair of the PRC.

In selecting outside counsel to be retained on behalf of the LSUC, regard will be had to the following:

- (a) the qualifications and expertise of outside counsel candidates for the matter at issue, including the experience of outside counsel candidates in matters of a similar nature;
- (b) the willingness of outside counsel candidates to adhere to these Guidelines and the terms of the attached Agreement for Performance of Legal Services;
- (c) equity and diversity hiring practices and policies of the LSUC as embodied in the LSUC's contract compliance policy from time to time;
- (d) the availability of outside counsel candidates within the time frame required by the LSUC; and
- (e) the experience of outside counsel candidates with alternative dispute resolution techniques and the willingness of outside counsel candidates to consider and engage in appropriate cases in alternative methods of dispute resolution.

VI. CONDITIONS OF RETAINER

All outside counsel retained by the LSUC pursuant to these Guidelines shall adhere to the provisions of these Guidelines and the terms of the attached Agreement for Performance of Legal Services unless otherwise agreed in writing by the Secretary of the LSUC or the Chair of the PRC. Without limiting the generality of the foregoing, all outside counsel retained by the LSUC pursuant to these Guidelines:

- (a) shall be in compliance with the LSUC's contract compliance policy as in force from time to time;
- (b) except where alternate fee arrangements are agreed upon in writing by the Secretary of the LSUC and approved by the Chair of the PRC, shall be paid a maximum hourly rate in accordance with the hourly rates provisions of the attached Agreement for Performance of Legal Services; and

- (c) shall be retained pursuant to the attached Agreement for Performance of Legal Services and shall report to and take instructions from the Secretary of the LSUC or the Chair of the PRC as set out in the said Agreement for Performance of Legal Services.

#### VII. APPROVAL OF ACCOUNTS

All accounts submitted to the LSUC by outside counsel retained pursuant to these Guidelines shall be approved by the Secretary of the LSUC or the Chair of the PRC. From time to time, the PRC, in consultation with the Litigation Committee of the LSUC, shall undertake or cause to be undertaken audits of accounts submitted to the LSUC by outside counsel retained on its behalf pursuant to these Guidelines. Outside counsel retained by the LSUC pursuant to these Guidelines shall cooperate fully with the LSUC in respect of all such audits.

#### VIII. COORDINATION OF ACTIVITIES

It is expected that outside counsel retained by the LSUC pursuant to these Guidelines will work with the LSUC in developing an overall case strategy and will keep the LSUC, through the Secretary of the LSUC, promptly informed of important developments and deadlines in all matters being handled by outside counsel. Outside counsel retained by the LSUC pursuant to these Guidelines must obtain the prior consent of the Secretary of the LSUC or the Chair of the PRC before undertaking major expenditures such as investigations, examinations, employment or retainer of experts, filing of motions (except routine matters such as extensions of time), and significant research or preparation of legal memoranda. With respect to particular items:

- (a) Legal Research and Memoranda: All significant legal research conducted by or on behalf of outside counsel retained by the LSUC pursuant to these Guidelines must be authorized in advance by the Secretary of the LSUC. Outside counsel should be aware that, with some exceptions, the LSUC is primarily concerned with their legal conclusions. Thus, the preparation of legal memoranda should generally be avoided except for brief summary reports. Moreover, the LSUC should not be charged when such memoranda are edited or re-worked for the purposes of improving an associate's research or writing skills. Outside counsel should also be aware that on professional regulatory matters the LSUC has considerable in-house expertise. Accordingly, no significant legal research matters should be undertaken by outside counsel without the prior authority of the Secretary of the LSUC in order to ensure that duplicative or unnecessary legal research is not undertaken. Finally, if the legal research to be undertaken is also applicable to other cases being handled by outside counsel for other clients, the LSUC should be charged only for its proportionate share of the costs incurred with respect to such research;
- (b) Provision of Copies of Documents: In order to assist the LSUC in planning case strategy and setting financial reserves, outside counsel should send the Secretary of the LSUC copies of all pleadings, discovery and examination documents in the form in which they were filed/served, as well as any other significant external or internal writings (including correspondence to or from counsel for other parties). Documents should be delivered or faxed, at the cost of the LSUC, only when time deadlines so require.
- (c) Settlement or Negotiated Resolutions: The attached Agreement for Performance of Legal Services requires that outside counsel retained by the LSUC pursuant to these Guidelines provide an initial case analysis, upon assignment of a file, within 30 days of being retained save in urgent circumstances. In initially evaluating the matter, outside counsel should consider such issues as the advisability of exploring early settlement or alternative methods of dispute resolution, the need for and identification of potential expert witnesses and whether any special investigative efforts are needed and whether these can be done by the LSUC in-house.

The LSUC has at times obtained excellent results by exploring settlement at an early stage in professional regulation proceedings including litigation and, in some instances, prior to the initiation of such proceedings. Thus, the LSUC may wish to discuss with outside counsel the advisability of entering into early settlement or other resolution discussions at the outset of a case or proceeding. Outside counsel should not undertake any such discussions with opposing counsel without first obtaining the approval of the Secretary of the LSUC.

- (d) Media Inquiries or Coverage: In order to ensure consistency and uniformity in setting forth the LSUC's position on professional regulation matters, outside counsel retained by the LSUC pursuant to these Guidelines should not respond to any media inquiries, or initiate same, without first consulting with the Secretary of the LSUC or, in urgent situations and in the absence of the Secretary, with the Chair of the PRC.

IX. FEES AND BILLING ARRANGEMENTS

As noted above, the fees and billing arrangements applicable to outside counsel retained by the LSUC pursuant to these Guidelines are set out in the attached Agreement for Performance of Legal Services.

Generally, for each matter handled on behalf of the LSUC by outside counsel, the LSUC requests the proposals and suggestions of outside counsel for reducing the costs of the proceeding, including billing methods other than hourly rate billing and alternative dispute resolution opportunities, etc. The LSUC wants the suggestions of its outside counsel in developing a plan, specific to the facts of each case, to contain costs.

No change in hourly rates or other significant expenses during a retainer may be implemented without the prior approval of the Secretary of the LSUC in consultation with the Chair of the PRC.

X. ACCEPTANCE OF THESE GUIDELINES

The LSUC will consider outside counsel's submission of accounts to the LSUC, after outside counsel's receipt of these Guidelines, as acceptance by outside counsel of these Guidelines and the attached Agreement for Performance of Legal Services.

AGREEMENT FOR PERFORMANCE OF LEGAL SERVICES

I. INTRODUCTION

This Agreement is subject to the attached Guidelines for Retention and Oversight of Outside Counsel Representing the Law Society of Upper Canada in Professional Regulation Matters. The purpose of this Agreement is to establish fees and rules for the provision of all legal services rendered by appointed counsel ("Counsel") to the Law Society of Upper Canada (the "LSUC") in matters coming within the jurisdiction of the Professional Regulation Committee (the "PRC") of the LSUC. This Agreement may be cancelled or amended by thirty (30) days written notice delivered by either party hereto (in the case of cancellation) and signed by both parties hereto (in the case of amendment).

II. FEES AND BILLING PROCEDURES

The maximum hourly rate to be charged by counsel is as follows:

Senior Counsel 12 years since call	-	\$250.00
Counsel 6 to 12 years since call	-	175.00
Counsel 3 to 6 years since call	-	120.00
Counsel at Bar less than 3 years	-	90.00
Law Clerks/Students	-	50.00

Hourly rates charged should include all general overhead and support staff expenses. Time spent by Counsel or his/her law firm with respect to the opening and closing of files, secretarial work, internal messenger services, use of internal data banks and other internal costs are deemed to be included in the hourly rate of Counsel. The LSUC does not expect to be billed by Counsel for routine secretarial work, messenger services, office supplies, or administrative fees for opening a file or billing a file as such expenditures are considered to be part of the normal overhead expenses of Counsel.

Disbursements for overtime and meals should not be charged to the LSUC nor should the LSUC be charged for word processing services; postage; taxi fares for staff who work late; photocopy expenses at more than cost to Counsel; and computer time other than reasonable and authorized computer legal research, and then only at cost.

In addition, unless prior written authorization therefore is obtained from the Secretary of the LSUC, the LSUC will not pay for:

- (a) More than ten (10) docketed hours per day, including per hearing or trial day;
- (b) Delivery/filing charges by firm personnel;
- (c) As noted above, time spent in preparing or processing accounts to the LSUC or budgets;
- (d) Secretarial or clerical tasks performed by any timekeeper including such matters as date stamping, conflict checks, collating, binding, copying, faxing, scanning, calendaring, scheduling, making travel arrangements, opening or closing matters, and managing clerical work;
- (e) Organization of Counsel's file or documents;
- (f) Significant legal research or the preparation of significant legal memoranda;
- (g) Diary maintenance or internal status reviews;
- (h) The use of expedited delivery services or messenger services, save in the case of urgency having regard to time deadlines;
- (i) Meal expenses within Counsel's local jurisdiction;
- (j) Other overhead items including, but not limited to, the use of firm conference rooms, equipment rentals, the use of books or periodicals, attendance at or conduct of seminars, staff overtime and related expenses, secretarial services and word processing;
- (k) Fax transmissions. Faxes received may be charged at the rate of \$0.15 per page. Long distance connection fees for fax transmissions may be charged;
- (l) Time spent in transit by Counsel, in excess of one-half the applicable hourly rate for the involved Counsel. No fees may be charged for time spent in transit unless such travel is necessitated by the demands of the matter being handled for the LSUC. In appropriate circumstances, Counsel should consider the possibility of conducting long distance discussions by conference call instead of travelling. If transit time is spent working for one or more clients in addition to the LSUC, the LSUC should be billed only for its proportionate share of such time spent.

Disbursements incurred by Counsel in relation to travelling on LSUC business shall be approved by the Secretary of the LSUC. While travelling on LSUC business, Counsel are entitled to stay at comfortable hotels and eat nourishing meals. However, the LSUC should not be billed for first-class or business class airline tickets or hotel accommodations or meals and entertainment not approved by the Secretary of the LSUC.

### III. ACCOUNTS

Accounts will be rendered monthly to the Secretary of the LSUC and will include, at a minimum, the following information:

- Date of each service rendered;
- Time period covered by account;
- Detailed description of the services rendered;
- Amount of time involved for services rendered;
- Identity of person providing service;
- Hourly rate of person providing service; and
- Number of hours spent by each person providing service.

Computer records in support of accounts will be provided to the Secretary of the LSUC upon reasonable request therefor.

### IV. REPORTING REQUIREMENTS

Upon assignment of a file, except in urgent circumstances, Counsel will report in writing to the Secretary of the LSUC within 30 days of being retained with an initial assessment of the matter and setting out a proposed course of action:

1. Regarding additional investigation or expert opinions or advice which may be required, together with supporting reasons therefor and an estimate of the projected costs thereof, including fees and disbursements;
2. Including an assessment of the potential for employing alternative dispute resolution techniques in the matter and the suggested nature and timing of same where applicable;
3. Including, in discipline hearings where Counsel is retained as prosecuting counsel, a recommendation as to the penalty that is to be sought at the hearing.

Subsequent written status reports are to be delivered to the Secretary of the LSUC on a quarterly basis, unless otherwise agreed to by the Secretary of the LSUC in writing, and more frequently as circumstances require.

### V. DELEGATION

- (1) Counsel will have carriage of the file and may assign specific portions of the work to associate counsel, other counsel or law clerks within the Counsel's firm only with the prior agreement of the Secretary of the LSUC.
- (2) Only one lawyer may attend a hearing or meeting at the cost of the LSUC unless the prior written consent of the Secretary of the LSUC is first obtained.

### VI. INSTRUCTIONS

Counsel will report to and take instructions from the Secretary of the LSUC and, as occasion requires, in matters concerning complaints, audits, investigations and discipline, the Chair of the PRC.

VII. CONFLICT OF INTEREST

Counsel hereby agrees not to act on behalf of any client in connection with any action or proceeding against the LSUC during the currency of her/his retainer by the LSUC.

DATED at the City of \_\_\_\_\_, in the Province of Ontario,  
this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
Counsel Retained by LSUC

THE LAW SOCIETY OF UPPER CANADA

Per:

\_\_\_\_\_  
(Name of Counsel retained on behalf of the LSUC, from the Firm of .....)

The Committee's Views

- 109. The Committee believes the draft guidelines fairly and comprehensively address the need for a document establishing a specific scheme of engagement and oversight for outside counsel in regulatory matters.
- 110. The Committee also feels that the appropriate balance has been struck between the responsibilities of the secretary and the Chair in their respective roles.
- 111. The Committee, accordingly, proposes that Convocation adopt the guidelines for application in regulatory matters.

Decision by Convocation

- 112. Convocation should decide:
  - a. Whether to adopt the draft guidelines (in tandem with those presented separately by the Litigation Committee);
  - b. Whether changes to the draft, before adoption, should be made.

REVIEW OF RULE 13, COMMENTARY 6  
OF THE RULES OF PROFESSIONAL CONDUCT

*A. NATURE OF THE ISSUE*

- 113. The Committee reviewed a discussion paper prepared by its working group<sup>12</sup> struck at the Committee's October 1997 meeting to study issues relating to the application of Rule 13, Commentary 6, respecting lawyers' duty to honour financial obligations undertaken on behalf of clients and in relation to the lawyer's practice.

<sup>12</sup>Gary Gottlieb, Laura Legge assisted by staff Jim Varro and Jan Walker.

114. The issue was defined in the Committee's issues list for 1997-98 as follows:

Issue:

Policy discussion on the need to re-evaluate, apart from the economic circumstance question, the rule requiring lawyers to fulfill financial obligations relating to their practices (Rule 13). Questions include:

- whether the identity of the creditor should affect how the Society pursues the matter (eg. LPIC deductibles, SearchLaw accounts<sup>13</sup>)
- size of obligation
- legal aid disbursement/agency accounts paid to but misapplied by a lawyer

Commentary:

The financial obligation rule has been discussed previously at the policy level. Most recently, the focus has been on whether debts connected to Law Society programs should be pursued as discipline cases.

115. The Committee's review focused on determining appropriate policies to assist in application of the Rule.

*B. BACKGROUND*

116. In part, the issues which prompted the review of the financial obligation rule arose from concern that the Law Society was essentially being used as a collection agency for those whose accounts or invoices had not been honoured by lawyers.

117. The rule under which the Commentary appears requires lawyers to maintain the integrity of the profession. Rule 13 reads:

The lawyer should assist in maintaining the integrity of the profession and should participate in its activities.

Commentary 6 reads:

In order to maintain the honour of the Bar, lawyers have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed or undertaken on behalf of clients unless, before incurring such an obligation the lawyer clearly indicates in writing that the obligation is not to be a personal one.

Lawyers have a professional duty generally to meet financial obligations in relation to their practice, including prompt payment of the deductible under the Society's Errors and Omissions Insurance Plan when properly called upon to do so.

118. While the effect of the Society's involvement with a lawyer in the context of the rule may mean that the complainant is successful in collecting the outstanding account, the primary thrust of the rule is the ethical obligation related to the practice of law.

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<sup>13</sup>With the closure of SearchLaw earlier this year, the working group did not review this aspect of the issue.

119. The large majority of financial obligation complaints are dealt with by the Complaints Department's Telephone Complaints Resolution (TCR) staff, who attempt to resolve the matter. If unresolvable, matters may eventually be referred to the discipline authorization committee for consideration, depending on the facts of the case.<sup>14</sup> In many cases, complainants are advised to pursue legal remedies.
120. The volume of financial obligation complaints is a reasonably small percentage of the number of complaints received in a year, accounting for about 10% in 1997. The bulk of those complaints are resolved at the TCR level. In 1996, only five cases were authorized for disciplinary action for failure to honour financial obligations.

### *C. DISCUSSION*

121. While concerns were expressed about the necessity of the Law Society having to review every complaint about a lawyers' failure to fulfill obligations, as defined by the rule, no matter what the circumstances, the Committee agreed with the working group's view that the rule itself should not be changed.
122. The Committee also agreed that with respect to disbursements particularly relating to the health professions' services, lawyers should be educated about the manner in which the services are contracted with respect to a client matter, and how payment is to be made. In some cases, lawyers may be better advised, where feasible, to have the client retain the health professional, which would avoid the issue of the lawyer's responsibility for the account.
123. Otherwise, clear language in retainer letters for services to be performed for a lawyer's client and the intended method or arrangement for payment, it is suggested, would avoid many of the problems that lawyers and the service providers encounter when the time for payment arrives.

#### Commentary on Specific Issues

##### Lawyers' Failure To Pay LPIC Deductibles

124. The Committee considered the argument that LPIC deductibles are akin to "in-house" (to the Society) debts, raising the question of whether the Society should be pursuing lawyers under Rule 13 for non-payment of these amounts.
125. While the perception may be that the Society is effectively attempting to collect its own debts through a conduct rule, the issue should be seen in the broader context as one element of the lawyer's duty to co-operate with the insurer once a claim has been made.
126. Both Rules 3 and 5 of the Rules of Professional Conduct set out specific obligations in this respect. A lawyer is required to "...assist and co-operate with the insurer or other indemnitor to the extent necessary to enable any claim which is made to be dealt with promptly" and where "the insurer or other indemnitor is prepared to pay its portion of the claim, the lawyer is under a duty to arrange for payment of the balance" (presumably including the deductible) (Rule 3, Commentary 10). Further, "Upon settlement of the client's claim, the lawyer must make arrangements to pay that portion of the client's claim that is not covered by the insurance, forthwith upon completion of the settlement" (Rule 5, Commentary 15).
127. It is in keeping with these provisions that Rule 13 Commentary 6 includes specific mention of the requirement for lawyers to pay the LPIC deductible.

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<sup>14</sup>Financial obligation complaints are also dealt with by Complaints Officers and occasionally by staff lawyers in the Complaints Department. Situations may involve other aspects of misconduct or the particularly unethical conduct of a lawyer in relation to a financial obligation complaint.

128. There are very few cases handled by the Complaints Department where lawyers fail to pay the deductibles. It was estimated that perhaps twelve files were reviewed by the Telephone Resolution Complaints Officers last year. This is largely due to the fact that LPIC deals with the non-payment issue directly with members, and has established a mediation facility as part of that effort. According to LPIC, they have an extremely high success rate in settling these matters with members, and it is the few that cannot be settled that eventually make their way to the Complaints Department.
129. In the absence of compelling reasons, the Committee agreed that this requirement of the Rule should not be changed.

The Size of the Obligation

130. Currently, without regard to the amount of the outstanding obligation, matters involving LPIC deductibles or Legal Aid agency/disbursement accounts, which have been paid to a lawyer who is then obliged to pay them to the service provider, are sent to the discipline authorization committee if the obligations remain unpaid after investigation. In the latter cases, where there is no question that the lawyer has received the funds to pay the obligation, the failure to pay may involve concerns that the lawyer has misapplied the funds.
131. The Committee acknowledged that the Rule does not distinguish between large and small outstanding obligations. But effectively, two levels of discretionary review apply, one at the investigatory level, and one at the discipline authorization level, to determine whether a matter requires a disciplinary response, based on any number of factors, including the size of the outstanding obligation.
132. Realistically, every effort is made by investigators in the Complaints Department to resolve the smaller financial obligation issues. With respect to those that are not resolvable, the Committee believes that each matter should be assessed on its merits and a determination made as to how the matter will be disposed of.
133. Ultimately, the Committee's view was that every breach of the rule, as is the case with many of the rules of conduct, will not result in discipline. The case-by-case approach, it is suggested, will allow for an appropriate assessment and would allow for consideration for possible disciplinary action of a pattern of conduct in this area, for example, where a series of accounts are outstanding that alone may not have warranted a disciplinary response.

Actions Against Lawyers

*Clients Suing Lawyers*

134. On occasion, complaints will be received by the Society where a lawyer is sued by clients, in circumstances where the matter falls within the ambit of the Rule and the lawyer appears to be or is judgment proof and also fails to report the claim to LPIC.
135. The client may obtain a judgment (or may obtain a default judgment) which the lawyer fails to pay, and the question is whether this should be considered a breach of the obligation to pay within the wording of the Rule.
136. Current practice in the Complaints TCR unit respecting judgments against lawyers is to advise the complainant that resolution will be attempted, but that the complainant should also, if the Society is unsuccessful, exhaust enforcement remedies.
137. The Committee was of the view that a suit for negligence against a lawyer by a client or an assessment of costs proceeding issue are related to the lawyer's practice, and that accordingly any judgment which remains unsatisfied relating to such actions is a debt covered by the Rule.

*Effect of an Action on the Society's Role*

138. The Committee felt that the Law Society should not involve itself in matters where any financial obligation is pursued in an action until the action results in a judgment (if the case is pursued).
139. Once the court has determined the lawyer's liability as a matter of judgment, the matter becomes an issue under the Rule if the lawyer does not pay it.

The Effect of a Lawyer's Bankruptcy on the Force of the Rule

140. As an additional issue to those originally identified, the Committee considered whether the professional obligation under the Rule survives a lawyer's bankruptcy, notwithstanding that the debt is, in the usual circumstance, subsumed in the bankruptcy, and can be included through filing a proof of claim.
141. While the Rule speaks to the obligation "quite apart from an legal liability", the Committee did not believe that this would operate and was not intended to negate for the purposes of the Rule the effect of the law as it applies to a bankrupt individual.
142. Accordingly, the view was that the bankruptcy operates to subsume the debt and that upon discharge, the obligation is extinguished. In such cases, the Law Society should advise complainants accordingly, making sure that they understand that this is information about the application of law and *not* legal advice.

Summary of the Conclusions

143. The Committee concluded that:
  - a. The existing text of the Rule should not be changed;
  - b. Lawyers should be educated about the necessity of clear retainer agreements with providers of services within the lawyer's retainer with the client which set out who will be responsible for payment of those services;
  - c. There should be no change to the handling of LPIC or Legal Aid-paid disbursement or agency accounts;
  - d. The Law Society should await the outcome of any action commenced by a lawyer relating to a financial obligation issue within the Rule before taking any action on the issue as a matter of determining the investigation;
  - e. Bankruptcy of a lawyer should be recognized as operating, by force of the applicable laws, to extinguish a financial obligation, which would be treated as any other debt of the debtor lawyer.

STAFF INVOLVEMENT IN COMPENSATION FUND CLAIMS AUTHORIZATIONS

144. At the September 1997 meeting of the Committee ("PRC"), the following issue was confirmed for review by a working group:

Issue

Policy decision on whether staff, as opposed to benchers, can authorize payments from the Compensation Fund

Commentary

This issue was on the agenda of the November 28, 1996 meeting of the Governance Restructuring Implementation Task Force as part of a transitional proposal but has been deferred pending an opinion from Andrew Brockett on this and other matters. The policy/procedural discussion on this issue must take place in the context of what the relevant legislation and regulations provide.

145. The Committee reviewed a discussion paper prepared by the working group<sup>15</sup>. It highlighted material arising from discussions in the fall of 1996 when the new committee structure was implemented, and the question of whether the Lawyers Fund for Client Compensation Committee should continue as Convocation's delegate for the Compensation Fund's statutory responsibility, or be replaced by a referee/staff delegation structure.
146. Because of the regulatory focus, the issue eventually fell to the Committee for consideration. For the purposes of the review, a joint meeting was held with the Lawyers Fund for Client Compensation Committee.
147. The Committees decided that, with the exception of a proposal to increase in the amount of grants authorized by staff, no change be made to the current committee structure or the scheme for authorization of grants.
148. The full report on this review is reported by the Lawyers Fund for Client Compensation Committee in the Convocation Material for May 29 Convocation.

APPENDIX 1

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE REPORT  
AND  
LPIC REPORT EXCERPT

APPENDIX 2

EXCERPT FROM "YACHETTI COMMITTEE" REPORT

APPENDIX 3

COMPLAINANTS PROTOCOL  
WITH SUGGESTED AMENDMENTS  
(in boldface) (see Report in Convocation file)  
Law Society of Upper Canada

PROTOCOL FOR COMPLAINANTS IN THE  
LAW SOCIETY'S DISCIPLINE PROCESS

Generally:

1. A Complainant should at all times be treated professionally and with courtesy, respect and candour by Law Society staff, outside investigators and counsel engaged by the Society with respect to the Complainant's matter.
2. A Complainant should have unimpeded access to information about the Law Society's regulatory processes.
3. The Society should dedicate itself to communicate with a Complainant in "plain language".
4. The Society should communicate with a Complainant, if the Complainant so requests, in French, and use its best efforts to communicate with a Complainant in the language of his or her choice.
5. The location of meetings at the Society with a Complainant, as much as practicalities permit, should be comfortable and convenient for a Complainant.

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<sup>15</sup>Marshall Crowe, assisted by staff David McKillop and Jim Varro.

In the investigatory stage:

6. The Society should assist a complainant, where necessary, in recording a complaint about a lawyer for the purpose of an investigation by the Society. As a rule, complaints are requested to be made in writing, but the Society will accept complaints recorded on audiotapes or videotapes.
7. A Complainant has a right to be informed of the status of the complaint with which he or she is involved. Accordingly, a Complainant should be regularly informed of and have the ability to access information on his or her complaint. For those matters investigated through the post-screening investigatory units of the Complaints Department and ongoing investigations in the Audit and Investigations Department (as a result of a matter directly referred to that department by a Complainant), a status report on the progress of the investigation should be provided at least every 90 days, unless otherwise agreed upon by the Complainant and the Society's investigator.
8. The Complainant should be appropriately and reasonably accommodated with his or her requests for meetings on the complaint matter with the Society as required for pursuit of the investigation, and in the scheduling of meetings with the Complainant as requested by the Society;
9. All written (including facsimile) or electronic communications from a Complainant should be acknowledged within 14 days of receipt by the Law Society. Telephone messages from a Complainant should be returned at the latest the next business day.
10. At the conclusion of an investigation, written reasons for not taking further action on a complaint (based on Law Society staff's or outside counsel's view of the matter, as the case may be) should be provided to a Complainant with an opportunity for review, in accordance with the complaints review procedures and the policies related thereto.
11. A Complainant should be advised of the disposition of a complaint by the Chair and Vice-Chairs of Discipline, other than an authorization for disciplinary action, within 14 days after notification to the member of the disposition.
12. A Complainant should be advised of the fact of an authorization for disciplinary action authorized by the Chair and Vice-Chairs of Discipline based on his or her complaint within 14 days of such a decision.

In the discipline hearing stage:

13. Discipline counsel should make themselves available to respond to a Complainant's inquiries or requests for interviews at any stage of the discipline process.
14. At an early stage in the prosecution of a member, discipline counsel should seek the views of a complainant on his or her expectations of the outcome of the discipline proceedings against the member being disciplined as a result of the complainant's complaint.
15. Unless a Complainant advises that he or she does not wish to be kept informed, discipline counsel should:
  - iii. Following service of a sworn complaint on the solicitor within the meaning of section 33(13) of the *Law Society Act*, write to all Complainants advising that a sworn complaint has been issued, setting out a brief explanation of the discipline hearing process and advising of a Complainant's right to be present at the hearing;
  - iv. Once a hearing date is set, advise the Complainant of this date and any subsequent changes in this date;
  - v. Where practicable, advise the Complainant of significant decisions regarding the withdrawal or amendment of particulars with which that Complainant is involved;
  - vi. Where practicable, advise the Complainant of any joint submissions as to penalty;
  - vii. Where a Complainant is a witness for the Society at a discipline hearing, adequately prepare the Complainant for the hearing;
  - viii. If the Complainant does not attend at the hearing, write to the Complainant advising of the final disposition of the sworn complaint and provide a copy of any written reasons of the hearing panel and/or Convocation;
  - ix. In the event of an appeal, advise the Complainant of the appeal, the hearing date of the appeal and the outcome.

16. The use of "victim impact statements" and the participation in and representation of a Complainant at discipline hearings will continue to be dealt with by the existing policy dated May 29, 1992, amended to provide for videotaped statements from Complainants where the Complainant and the parties to the proceeding agree. The policy should be brought to the attention of Complainants so that they are aware of the opportunity to provide a victim impact statement to the Discipline Committee.

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Re: Guidelines for Retention/Oversight of Outside Counsel - Professional Regulation Matters

Ms. Cronk requested that the following changes be made to the Guidelines:

- (1) Page 29, V.(Authority to Retain Outside Counsel), 1st paragraph - add the words "Treasurer or the Secretary"
- "All outside counsel retained by the LSUC pursuant to these Guidelines will be retained by the Treasurer or the Secretary of the LSUC in consultation with the Chair of the Professional Regulation Committee."
- (2) Page 30, VI.(c) (Conditions of Retainer) - add "Treasurer"
- (c) shall be retained pursuant to the attached Agreement for Performance of Legal Services and shall report to and take instructions from the Treasurer or the Secretary or the Chair of the Professional Regulation Committee as set out in the said Agreement for Performance of Legal Services."
- (3) Page 31, VII. (Approval of Accounts) - add the following sentence at the end of the paragraph:
- "A review of outside accounts will be made where there is a substantial variance from the fees projected."
- (4) Page 31, VIII. (Coordination of Activities) 1st paragraph - add "Treasurer"
- "Outside counsel retained by the LSUC pursuant to these Guidelines must obtain the prior consent of the Treasurer or the Secretary of the LSUC or the Chair of the Professional Regulation Committee before undertaking major expenditures such as investigations, examinations, employment or retainer of experts, filing of motions (except routine matters such as extensions of time), and significant research or preparation of legal memoranda."
- (5) Page 33, IX. (Fees and Billing Arrangements) 3rd paragraph - add the words "staffing" and "Treasurer"
- "No change in staffing, hourly rates or other significant expenses during a retainer may be implemented with the prior approval of the Treasurer or the Secretary of the LSUC in consultation with the Chair of the Professional Regulation Committee."

Report of the Litigation Committee

Re: Guidelines for Retention/Oversight of outside Counsel - Litigation Matters

Mr. Carter asked that the following amendment be made to the Guidelines in litigation matters:

Page 4, VIII (Fees and Billings Arrangements) 3rd paragraph - add "Treasurer"

"No change in staffing, hourly rates or other significant expenses during a retainer may be implemented with the prior approval of the Treasurer or the Secretary of the LSUC in consultation with the Chair of the Litigation Committee."

It was moved by Ms. Cronk, seconded by Ms. Sachs that the Guidelines for the retention of outside Counsel in both Professional Regulation and Litigation matters be adopted as amended.

Carried

Re: LPIC Issues - Amendment to Rule 3 Commentary 10

Ms. Sachs presented the item in the Report dealing with the Amendment to Rule 3 Commentary 10.

It was moved by Ms. Sachs, seconded by Ms. Cronk that the recommendation set out on page 12 paragraph 48 be adopted.

“Rule 3 Commentary 10 be amended to make the reporting requirement to LPIC mandatory”

Carried

Re: Disclosure of Formal Complaints

Ms. Sachs presented the item dealing with the Disclosure of Formal Complaints for Convocation's approval.

It was moved by Ms. Sachs, seconded by Ms. Cronk that the recommendations set out in paragraphs 65 to 67 on pages 16 and 17 of the Report be adopted, that a formal Complaint be considered a public document 10 days after being served by registered mail.

Carried

Re: Amendments to Complainants' Protocol

Mr. Sachs presented the item on the Amendments to Complainants' Protocol for Convocation's approval.

It was moved by Ms. Sachs, seconded by Ms. Cronk that the proposed amendments to the Complainant's Protocol set out in Appendix 3 be adopted as follows:

Appendix 3

- page 73, paragraph 6 - the following sentence be added:

“As a rule, complaints are requested to be made in writing, but the Society will accept complaints recorded on audio tapes or videotapes.”

- pages 74-75 - paragraph 14 be added as follows:

At an early stage in the prosecution of a member, discipline counsel should seek the views of a complainant on his or her expectations of the outcome of the discipline proceedings against the member being disciplined as a result of the complainant's complaint.”

Carried

THE REPORT AS AMENDED WAS ADOPTED

REPORTS - INFORMATION ONLY

The following Reports were presented for information only:

CEO's Quarterly Report  
Report of the Legal Aid Committee  
Professional Development & Competence Committee

CEO's Quarterly Report

May 1998

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CEO's First Quarter  
Report to Convocation  
January - March 1998

- I. General overview of developments, initiatives and accomplishments
  - A. Finance
  - B. Secretariat
  - C. Education
  - D. Information Systems & Libraries
  - E. Human Resources
  - F. Communications
  - G. Project 200 Update

- II. Compliance with Executive Limitations

General Overview of Developments, Initiatives, Results

The information contained within this report summarizes activities, initiatives and results for the Law Society's operations during the first quarter of 1998 -- January 1 to March 31. The information is not exhaustive, it is a highlight of our operational activities. Management's compliance with the executive limitations prescribed by Convocation is found at Tab 1.

- A. Finance

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*1997 Year End.* Finance staff spent much of the first quarter preparing the 1997 draft audited financial statements for the General Fund and the Lawyers Fund for Client Compensation. The audit was completed in March. The Finance and Audit Committee reviewed the statements at their April meeting.

The General Fund surplus for the 1997 year was \$557,000 -- \$104,000 from the Fund's administrative operations, \$6,000 from the Bar Admission Course and \$447,000 from the Legal Aid Levy.

*1998 Budget.* Looking to the 1999 year, program reviews were performed by the Finance and Audit Committee in conjunction with Finance staff for the 1998 program budgets. The programs that have been reviewed to date are Communications and Policy Secretariat.

*Receipt of Members' Fees.* Total 1998 fees collected from members as at March 31, 1998 are \$23,480 million (1997 - \$26.315 million) against the 1998 year's budget of \$39,906 million (1997 - \$42.041 million). Percentage of total collections are 58.8% for 1998 and 62.6% for 1997. Of the 58.8% that have remitted payment, 57% of members took advantage of the early payment discount, therefore, only 1.8% of fees have been collected in February and March.

Also introduced for the first time is a monthly payment plan -- 1,750 members or 6.4% are utilizing this plan.

*Osgoode Hall Renovations.* Tenders were received and an architect was chosen for the architectural portion of work required on the south-east wing of the building. We have received the specifications for the iron fence and support wall repairs. Renovations to the print shop were completed in time for the arrival of the new out-sourced print providers, Pitney Bowes. New chairs were acquired for the main dining room, small dining room and museum room.

*Out-sourcing of Services.* Effective February 2, 1998, Pitney Bowes Management Services began providing mailroom and printing services to the Law Society. The out-sourcing will provide the Society with the latest in print and mail technologies. All displaced Law Society staff were re-employed on-site or re-deployed at another site by Pitney Bowes Management Services.

B. Secretariat

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Complaints

Performance Data

- Files opened in Q1: 978
- Files closed in Q1: 1,126
- Files open as of March 31, 1998: 2,843

- Year-to-date Comparisons:

Date	# Files Opened - year to date	Decrease from Previous Year
March 31, 1998	978	9.65%
March 31, 1997	1083	12.4%
March 31, 1996	1237	4.6%
March 31, 1995	1297	

- Authorizations:
  - Formal Complaints: 22
  - Invitations to Attend: 4
  - Letters of Advice: 3
  - Referrals to LPIC: 3
  - Direction to Close File: 9

### Trends

The number of new complaints opened continues to fall as effective screening and other remedial measures take full effect. Regrettably, delays in processing investigations continue to be felt, mainly due to a number of gaps in support services available to investigators. Steps have been taken to address these concerns and the expectation is for improvement in subsequent quarters.

### New Initiatives

Steps are being taken to incorporate the new complainants protocol into the regular business of the complaints department. All investigative staff have completed plain language training. Diversification of investigator workloads is underway to increase departmental productivity.

### Audit and Investigations

#### Performance Data

Number of investigations in progress:

- 1st Quarter, 1998: 160
- 1st Quarter, 1997: 161

Investigations completed:

- 1st Quarter, 1998: 49
- 1st Quarter, 1997: 31

### Trends

The case inventory of serious investigation matters remained relatively constant through the first quarter.

### New Initiatives

In the first quarter, considerable energy was directed toward the implementation of e-filing of the Member Information Form (MIF) which began in early January. As well, the self-reporting Private Practitioners Form (PPF) was finalized in January and distributed to the profession.

The due date for the MIF occurred in the first quarter and there was also increased activity created by the new 90-days-within-fiscal-year-end reporting requirements for private practitioners. As a result over 11,300 telephone calls (to and from members), along with 1,339 email inquiries were handled by staff. By way of comparison, the number of telephone calls dealt with in the first quarter is about 5,200 higher than in the 4th quarter of 1997. (Past statistical gathering practices do not allow for a year-to-year comparison).

*Self Reporting:* The audit and investigations department provided a seminar in March for the Certified General Accountants Association on the self-reporting model. Similar information seminars are planned for throughout 1998. Neither the Institute of Chartered Accountants nor the Certified Management Accountants Association have accepted the Law Society's offer of such seminars.

Lawyers Fund for Client Compensation

Performance Data:

	at DECEMBER 31, 1997	at MARCH 31, 1998	INCREASE FOR THREE MONTH PERIOD
GROSS AMOUNT OF OUTSTANDING CLAIMS	\$36,161,433	\$37,845,726	\$1,684,293
"AT LIMITS" AMOUNT OF OUTSTANDING CLAIMS	\$15,592,177	\$16,617,377	\$1,025,200

Trends

As of March 31st 1998 the Fund had 339 claims waiting to be dealt with which total \$37,845,726. Once the \$100,000 per claimant limit is applied to this inventory of claims, the maximum potential financial exposure falls to \$16,617,377, which represents an increase of over \$1 million from December 31st 1997. This increasing trend is expected to continue into the next quarter and throughout the remainder of the year.

As well at the end of the first quarter, the Fund had made grant payments totalling \$1.3 million to clients of 24 dishonest members. With the annual grant budget set at \$5.5 million, first quarter payments are within budget.

Discipline

Performance Data

- Matters authorized and referred to discipline (1st qrt, 1998): 55
- Matters authorized and referred to discipline (1st qrt, 1997): 176

*(Note: The year-to-year decrease reflects a decision by Forms Services to stop seeking authorizations for failures to file by September 1997 in anticipation of the new self reporting form)*

The following chart summarizes the number of matters disposed of by Discipline Committees and by Discipline Convocations in the first quarter of 1998 and compares it with the first quarter of 1997:

DISCIPLINE DEPARTMENT STATISTICS		
	First Quarter, 1998	First Quarter, 1997
NUMBER OF MATTERS/ SOLICITORS DISPOSED OF BY DISCIPLINE COMMITTEES	34/36	37/34
NUMBER OF MATTERS /SOLICITORS DISPOSED OF BY DISCIPLINE CONVOCAATION	40/28	10/9
TOTAL NUMBER OF MATTERS/SOLICITORS DISPOSED OF BY DISCIPLINE COMMITTEES AND DISCIPLINE CONVOCAATIONS	74/64	47/43

Practice Advisory and Professional Conduct

Performance Data:

- Number of telephone inquiries (1st qrt, 1998): 2,376
- Number of telephone inquiries (1st qrt, 1997): 2,536
- Percentage of callers by "type":
  - ◆ sole practitioners: 33%
  - ◆ employees, partners or associates: 37%
  - ◆ non-members: 16%

Professional Standards

Performance Data

Professional Standards Statistics	
	First Quarter
Existing Caseload	164
New Files Opened	3
Files Closed	10
Total Open Files	157

The number of staff attendances scheduled remained constant at, on average, 40 per month, for the first quarter of 1998, but the cancellation rate was nearly 50 per cent. Reasons for cancellations include notification from lawyers of conflicting commitments, such as court appearances which take priority over a practice advisory attendance. It is anticipated that the volume of cancellations will drop significantly when the reforms to the *Law Society Act* are implemented and participation in the Practice Review Program can be mandated.

New Initiatives

Professional Standards made the jump to cyberspace in the first quarter. As part of the implementation of Project 200 the professional staff of the department have been equipped with laptop computers and modems and now conduct business from their home offices. Support staff remain at Osgoode Hall and the professional staff work from the Law Society at least once a week and continue to share information in weekly departmental meetings.

C. Education

Bar Admission Course

Performance Data

Call to the bar

- Number called to the bar as of March 31, 1998: 1,080
- Number called to the bar in 1997: 1,150

Phase I enrollment

- Number registered (1998): 1,226
- Number enrolled (1997): 1,107

Phase III enrollment

- Number registered (1998): 1,318
- Number registered (1997): 1,143

Trends

The number of students registered for Phase I and Phase III in 1998 is up significantly from 1997. Traditionally, as students change their plans the numbers drop, however it is unlikely that any such decrease will reduce the 1998 registration to near the 1997 levels. With the number of Ontario Law School graduates consistent year-to-year, the reasons for the higher number of Bar Admission Course students could be attributable to any of the following: more law school graduates deciding to practice law; more students attending from either other Canadian common law schools or other countries.

New Initiatives

*Student Success Centre*

The Law Society has developed a new Student Success Centre in support of enhancing access to the bar for Aboriginal and other students. The Centre is gathering information to identify the issues and barriers surrounding access to the bar questions. Under the leadership of Wendy Johnson-Martin, the Centre will forge links between the Law Society and Aboriginal programs and organizations, and law schools. As well an Aboriginal mentoring program and a resource directory of Aboriginal lawyers are being developed. The services of the Centre are to be expanded so they are available to all students in the future.

*BAC Administration*

The Bar Admission Course Registrar has introduced new efficiencies into the Bar Admission Course administration, and in particular is working with the Project 200 Team to enhance the student database to maximize compatibility with the member database. The changes are designed with a view to improving service to students and members while minimizing the cost of administrative operations.

Articling

Performance Data

As part of the overall effort to streamline the articling program requirements, the process by which members of the profession apply to serve as an Articling Principal was changed effective January 1, 1998 from an annual written application to an initial written application and an automatic Law Society review to determine eligibility for renewal. Eight hundred renewals were processed in the first quarter of the 1998-1999 articling term.

In the first quarter, 929 mid-term evaluations were received from students articling in the 1997-1998 articling term. Student ratings of their articling experience are depicted in the following table:

1997-1998 Mid-Term Evaluation Rating of Articles by Students	# of Students	% of Respondents
Unsatisfactory	8	0.9%
Satisfactory	70	7.5%
Good	282	30.3%
Very Good/Excellent	516	55.5%
No Response to Question	53	5.7%
Total	929	99.9%

#### Financial Aid

As a result of successful discussions between the education department and the provincial government, students who received money from Ontario Student Assistance Program (OSAP) in their final year of law school will retain eligibility for OSAP during Phase One. Concern over eligibility arose following changes to loan granting rules as a result of plans to harmonize the provincial and federal student loans programs.

The Bank of Montreal is now offering lines of credit to students also seeking assistance from the Law Society's student loan program. The program will help reduce the size of the Society's loans program, while offering greater flexibility and benefit to students. The Law Society's loan program will remain in place to service those students who do not qualify for bank assistance.

The Special Committee on Relief & Assistance made two awards in the aggregate amount of \$7,473 in the first quarter. As well an award of \$1,000 was made from the J. Shirley Dennison fund.

#### Placement

##### Performance Data

- No. of students expected to article in 1998 - 1999: 1,202
- No. of students with articles: 946 (78.7%)
- No. who continue to seek articles: 256 (21.3%)

#### Trends

The Admissions and Equity Committee established a working group to review the procedures governing recruitment of summer students and articling students. The Working Group's first order of business is to produce an options paper for the Admissions and Equity Committee.

### Continuing legal education

#### Performance Data

	Q1, 1998	Q1, 1997
• No. of live programs:	23	15
• No. of video replays:	20	15
• No of registrants:	1333	1571
• Program revenue (gross):	\$256,625.	\$302,563.
• Publications revenue:	\$ 63,245.	\$ 45,329.
• Bursaries:	128	112
• Revenue <u>decrease</u> (from 1997):	\$28,022 (9%)	

*(Note: this decrease is attributable to program rescheduling and a high number of small-group workshops in the first quarter.)*

#### Trends

Demand for continuing legal education remains up from its recessionary lows. The success of CLE's recent evening series on *Resolving Business Disputes Outside the Courtroom* provides further confirmation of an already visible and growing preference for CLE in "bite-size" (half-day or briefer) formats.

#### New Initiatives

A CLE brainstorming session in the first quarter brought together representatives from the Law Society, CBA-O, CDLPA, Women's Law Association, the Criminal Law Association and others to discuss enhancing CLE in Ontario. A discussion paper on the CLE enhancement is being produced and is expected to be ready by this fall.

CLE and Professional Standards are developing plans for the production of six handbooks for use by lawyers who are not making substantial use of their legal skills on a regular basis but who are seeking to requalify for practice. Topics covered by the booklets would range from the solicitor-client relationship to efficient systems for practice management.

#### Specialist certification

##### Performance Data

##### First quarter:

• No. of specialists certified:	13 (Q1, 1997 = 15)
• No. of specialists recertified:	14
• No. of applicants rejected:	3
• No. of new applicants currently seeking certification:	42 (Q1, 1997 = 42)
• No. of new requests for application packages:	60 (Q1, 1997 = 51)

There are 625 certified specialists in Ontario.

D. Libraries

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Great Library

Performance Data

- Number of requests for research & assistance: 20,300 (80,100 requests were received in all of 1997)
- Number of visitors: N/A  
*(Note: this number is unavailable for the first quarter due to the removal of the "turnstiles" as a result of repair work)*

New initiatives

Restoration of the plaster work in the main reading room has been completed and the scaffolding removed. The flooring in the adjacent rooms has been replaced and the primary collection has been completely reorganized. As well, the Ontario Realty Corporation has completed the structural repairs to the second floor.

Catalogue

The cataloguing staff have produced a CD-ROM catalogue for the Great Library and County Library collections. This has been sent free to all County libraries. It has been offered for sale to other organizations and has been well received.

Archives

Performance Data

- Requests for research assistance from staff/benchers: 80
- Requests for assistance from outside sources: 81

E. Human Resources

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Human Resources

The daily operations of the Human Resources department provides support to all LSUC employees through a consultative model in the provision of services related to employee relations, recruitment and staffing issues, compensation, benefits, training, and professional development matters. In keeping with the commitment to provide continuous improvement within the Law Society, over the past quarter, the Human Resources department has also focused it's energies on preparing implementation strategies for operational changes under the Project 200 initiatives.

F. Communications

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Website -- [www.lsuc.on.ca](http://www.lsuc.on.ca)

Performance data

- Number of web pages accessed (1st quarter): 155,385  
(114 % higher than the same period in 1997)

## Ontario Lawyers Gazette

In the first quarter, work began on a report into the acceptability of the Ontario Lawyers Gazette, including the development of a reader's survey and research into alternative means of communicating with members. Research results will be available in the fall of this year.

### Media Relations

#### Performance data

Media Inquires (requests of the Society from news media for information or interviews):

- 1st quarter, 1998: 157
- 4th quarter, 1997: 75

As is usual, a high number (more than 65 per cent) of the media inquires in the first quarter related to providing information about discipline matters or complaints against members. The higher than usual number of inquiries is attributable to the media interest in the disbarment of Alan Eagleson in January.

Media Coverage (media reports about the Law Society or issues of interest to the Society):

- 1st quarter: 384

Coverage of Toronto lawyer Alan Eagleson's disbarment accounted for the single largest grouping of media coverage (more than 48 per cent) and for a moderately higher than usual amount of coverage.

Again, as with inquires, the primary item generating media coverage relates to reporting on complaints issued against, or to the outcome of disciplinary action taken by the Society against lawyers.

## G. Project 200

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Implementation activities on all four Project 200 initiatives (technology, regulatory restructuring, customer service centre and human resources) have now begun. According to the implementation plan some 700 tasks and activities have been identified for completion before January 2000 when the restructuring is scheduled to conclude.

### Regulatory Restructuring

A joint benchers-staff ADR team has been working with the consulting-law firm Stitt Feld Handy Houston since early April to develop alternative remedial solutions to the discipline process in appropriate cases. The team has consulted with a wide variety of stakeholders including benchers, defence counsel, CBA-O, Advocates' Society, the judiciary and members of both the public and profession who are familiar with the discipline process. Reports issuing from the consultations indicate a strong support for the introduction of ADR into the Law Society's regulatory processes. The team is now developing a conceptual ADR model that would respond to the Law Society's mandate and feedback from stakeholders. A joint meeting of PRC & PDC is scheduled for June with a report expected to reach Convocation later that month. The expectation is that an ADR pilot project will be initiated this summer in order to gather sufficient data that will lead to a series of final recommendations later this fall.

Plans for the organizational restructuring of the regulatory area are underway. A new organizational chart has been developed and job descriptions for senior positions are now being finalized. The new structure -- which significantly streamlines management and simplifies reporting -- will be implemented in five phases during 1999.

### Customer Service

Customer feedback is being collected from members of the profession and the public in order to form the basis for the creation of services to be offered through a consolidated customer service and call centre. P200 is in the process of acquiring supporting technology and developing the facilities requirements for the new unit which is scheduled to open in early 1999.

### Technology

Requirements for a new member database and case tracking system are currently being developed through consultations with all data users within the Society. Software selection and acquisition will take place over the summer and fall.

### Human Resources

The intensive process of re-evaluating all Law Society jobs has begun. The outcome of this process will lead to a new performance-management, training, recruitment and compensation system.

## COMPLIANCE WITH EXECUTIVE LIMITATIONS

### A. BUDGETING

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1.0 Unless otherwise directed by Convocation, the Chief Executive Officer shall not:

- ⇒ Allow operating expenses to deviate from the budget in any significant way.  
In compliance. The 1998 surplus from General Fund administrative operations is \$104,000 versus a break-even budget.
- ⇒ Allow expenditures to deviate materially from the Society's mission, priorities and programs.  
In compliance. Expenditures are monitored internally monthly to ensure there are no material deviations from budget. In addition, expenditure information is reported to the Finance and Audit Committee and Convocation on a quarterly basis.
- ⇒ Incur debt on behalf of The Law Society of Upper Canada, other than an operating line of credit.  
In compliance.

### B. ASSET ADMINISTRATION AND ACQUISITION OF SERVICES

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1.0 Unless otherwise directed, the CEO shall not:

- ⇒ Allow Society funds to be invested except in accordance with the Society's Investment Policy.  
In compliance. Investment reports are presented to the Finance and Audit Committee quarterly detailing compliance and information regarding the investment mix.
- ⇒ Allow physical assets to be subjected to improper wear and tear or insufficient maintenance or allow the historical integrity of the building to be impaired.  
In compliance. A facilities plan has been submitted to the Finance and Audit Committee outlining work that is required and estimated costs. As well, work has been completed on various areas of the building. Architect's reports have been acquired indicating areas of further repair and renovation.

⇨ Operate without adequate insurance.

In compliance. A review has been completed by staff and an independent broker determining the levels of insurance coverage and their costs. A report was included in the January 1998 Finance and Audit Committee meeting material.

⇨ Make any capital purchases or commit the Society to any capital purchase of a value greater than \$100,000.

In compliance. All payments for purchases of \$100,000 or more must be approved by a Bencher. Policies and procedures have been put in place mandating that purchase orders greater than \$100,000 be approved by Convocation.

⇨ Make any purchase:

◆ If normally prudent protection against conflict of interest has not been taken.

In compliance. A Business Conduct Policy has been approved by Senior Management that ensures compliance with the Society's standards of business conduct which includes prudent protection against conflict of interest.

◆ If over \$10,000 without having obtained competitive prices and quality, unless fully justified and documented.

In compliance. The Society requires three written quotations for all purchases in excess of \$10,000.

⇨ Contract for any service that does not comply with the Law Society's policy on retaining services.

In compliance. A central purchasing department is in place that has policies and procedures that must be followed.

⇨ Keep books and records, receive, process or disburse funds under controls which are insufficient to meet the Society's Auditor's standards.

In compliance. Financial practices and procedures have been developed and adopted by Senior Management and ensure proper and adequate control. Proper record keeping practices are in place and meet the Society's Auditor's standards. On an ongoing basis these practices and procedures are reviewed in order to ensure compliance.

⇨ Acquire, encumber, or dispose of real property.

In compliance. During the period, no real property was acquired, encumbered or disposed.

## C. FINANCIAL CONDITION

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1.0 The Chief Executive Officer shall protect the financial stability of The Law Society and shall not:

⇨ Allow tax payments or other government ordered payments or filings to be overdue or inaccurately filed.

In compliance. All tax payments and other government ordered payments and filings are prepared and remitted to the respective government department on schedule.

⇨ Fail to monitor changes in legislation or legislative interpretation affecting Law Society finances and take appropriate action to protect the Law Society or each fund from liabilities arising from such changes.

In compliance. All changes to legislation and legislative interpretation are monitored and, when required, action has been initiated to protect the Society.

⇨ Use reserves (except for the Errors and Omissions fund) except as budgeted.

In compliance. Annual audited financial statements and quarterly unaudited financial statements detail the use of reserves.

D. HUMAN RESOURCES PRINCIPLES

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The Law Society should pursue equity standards for its own staff that will make it a model for the profession as an employer. Accordingly:

- 1.0 The Chief Executive Officer shall not cause or allow conditions that are unfair or undignified to staff.  
In compliance. The Law Society of Upper Canada is committed to providing a collegial working environment in which all individuals are treated with respect and dignity.
- 1.2 The Chief Executive Officer shall not operate without:
- ⇒ Written personnel procedures that clarify personnel rules for staff, provide effective handling of grievances, or protect against wrongful conditions.
  - ⇒ Job descriptions and regular performance appraisals for all staff.  
In compliance.
- 1.3 The Chief Executive Officer shall not operate without a workplace equity policy for staff that:
- ⇒ Recognizes that every person has the right to equal opportunity without discrimination in matters relating to employment.  
In compliance. The Law Society works within the principles of equity and has established policies to prohibit the treatment of any persons in a discriminatory manner as identified under the Ontario Human Rights Code.
- 1.4 The Chief Executive Officer shall not operate without a workplace harassment policy for staff that prohibits the harassment of any person on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age.  
In compliance. The Society's harassment policy was revised to include workplace harassment. This process included selection and initial training of internal staff advisors on the revised policy.
- 1.5 The Chief Executive Officer shall not operate without being in compliance with all rules of the Law Society of Upper Canada and relevant provincial and federal legislation.  
In compliance. The Law Society complies with all organizational, provincial and federal rules, regulations and/or appropriate legislation.
- 1.6 The Chief Executive Officer shall not operate without developing guidelines for hiring outside counsel that ensure that work is fairly allocated among members of the legal profession.  
In compliance. Proposed guidelines are to be considered by Convocation in 1998.
- 1.7 The Chief Executive Officer shall not operate without examining whether or not the Law Society should develop a contract compliance program that would have the effect of requiring firms and organizations with which it does business to have in place practices that meet diversity and equity requirements.  
In compliance. A contract compliance program is currently under development.

E. COMPENSATION AND BENEFITS

---

- 1.0 With respect to employment, compensation and benefits to employees, consultants, contract workers and volunteers, the Chief Executive Officer shall not jeopardize the Society's fiscal stability.  
In compliance. Budgets are monitored monthly to ensure that employment arrangements do not jeopardize fiscal stability.

- 1.1 The Chief Executive Officer shall not change his/her compensation and benefits.  
In compliance. The CEO continues to be compensated in accordance to the terms of his employment contract which has not been changed.
- 1.2 The Chief Executive Officer shall not establish current compensation and benefits which deviate materially from the geographic or professional market for the skills employed.  
In compliance. HR continues to ensure that The Law Society is operating within current geographic and professional market rates.
- 1.3 The Chief Executive Officer shall not create compensation obligations that continue over a longer term than revenues can safely be projected.  
In compliance. Current practices continue to ensure that budgets are allocated sufficiently to cover compensation obligations.
- 1.4 The Chief Executive Officer shall not fail to maintain a parental leave policy for all staff.  
In compliance. The parental leave policy continues to be maintained.

F. COMMUNICATION AND SUPPORT TO CONVOCATION

1.0 The CEO must provide Convocation with sufficient information and advice so that benchers are reasonably informed. Accordingly, the CEO must not:

⇒ Let Convocation be unaware of lawsuits affecting the Law Society.

In compliance. Note: With the development of a litigation committee, matters pertaining to lawsuits are now reported to Convocation through the committee's regular reports to benchers.

Report of the Legal Aid Committee

Legal Aid Committee  
May 14, 1998

Report to Convocation

Nature of Report: Information

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Financial Reports - March 1998

The Legal Aid Committee met on May 14, 1998. In attendance were:

Committee members: Bob Armstrong (Chair), Heather Ross (Vice Chair), Neil Finkelstein (Vice Chair), Tamara Stomp, Allan Lawrence, Rich Wilson, Tom Carey and Elvio DelZotto.

Senior Management of OLAP: Deputy Directors George Biggar, Ruth Lawson and David Porter, Clinic Funding Manager, Joana Kuras.

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

*The following item is for your information:*

- 1. Financial Reports - March 1998

The financial reports for March 1998 are attached. (see Report in Convocation file)

Report of the Professional Development and Competence Committee

Professional Development and Competence Committee  
May 14, 1998

Report to Convocation

Nature of Report: Information

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I. TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on 14 May, 1998. In attendance were Richmond Wilson (Vice-Chair), Michael Adams, Ron Cass, Carole Curtis, Susan Elliott, Helene Puccini, and Heather Ross. Gavin MacKenzie attended for the first part of the meeting. Staff members present were Janine Miller, Paul Truster, Sue McCaffrey, Felecia Smith, Sophia Sperdakos and Susan Binnie and, for part of the meeting, Carol Austin, Valerie Fogarty and Hershel Gross.
2. The Committee is reporting on the following information matters:
  - A report on the Benchers Sessions on Professional Development and Competence held on 12 and 13 May, 1998;
  - Matters being monitored by the Committee:
    - An ongoing review by a Committee working group of the future delivery of County and District library services;
    - A report on developments in relation to a draft rule for Mandatory Mediation in Ontario;
    - A report on a meeting of the Continuing Legal Education Liaison Committee;
    - A report from the ADR Sub-Team of the Regulatory Redesign Team of Project 200;
    - A report on the costs of implementing the Law Society's requalification policy in 1999 for application from July 1, 1999, onwards;
    - A proposal from the Canadian Council for Human Resources in the Environmental Industry to certify environmental lawyers.

II. A REPORT ON BENCHER SESSIONS ON PROFESSIONAL DEVELOPMENT AND COMPETENCE HELD ON 23 APRIL AND 12 AND 13 MAY, 1998

3. The Committee reviewed matters arising from the benchers sessions held the evenings of Thursday, 23 April and Tuesday, 12 May, and on Wednesday, 13 May, under the title "Let's Face the Competence Issue."
4. The panellists for the sessions included:
  - Professor Michael Trebilcock, Faculty of Law, University of Toronto;
  - Dean Eileen Gillese of the Faculty of Law, University of Western Ontario;
  - Dean Marilyn Pilkington of the Faculty of Law, York University;
  - Dr. Gerald Gold, Associate Registrar and Director of the Quality Management Division, College of Physicians and Surgeons of Ontario;
  - Nora Murrant, General Director of Programs, Institute of Chartered Accountants of Ontario;
  - Debra Forman, Professional Development Director, Davies, Ward & Beck;
  - Malcolm Heins, President, Lawyers Professional Indemnity Company.
5. Benchers participating on the panels included Gavin MacKenzie, Helene Puccini, Vern Krishna, Richmond Wilson, Larry Banack, Nora Angeles, William Carter, Elvio DelZotto, Ron Manes and Mary Eberts. Participants from among staff included Susan McCaffrey, Janine Miller, Sophia Sperdakos and Paul Truster. (The cost of the sessions was subsequently estimated to be under budget at about \$7000, excluding travel and accommodation, instead of \$9,400 budgeted.)
6. The four sessions addressed multiple issues relating to competence facing the legal profession at the present time. Discussion in Committee emphasised that several panellists had pointed out a possible trend among regulators in certain professions, namely a move towards greater reliance on preventative methods in regulating the membership and a decreased emphasis on disciplinary methods. Regulators were using newer techniques including random and regular monitoring of "performance" of professional services by members. Such monitoring was not related to prior discipline records of members but was a "pro-active" approach directed at enhancing members' competence.

7. Dr. Gold had suggested that reliance on traditional methods to enhance competence, such as self-selected continuing education seminars, was no longer considered the sole or the most efficient method of ensuring competence. The medical research literature suggested that competence could be enhanced more effectively by focused sessions teaching skills oriented to particular issues, or to problems of significance to certain groups in the profession.
8. Other panellists emphasised that a previous assumption that competence at time of entry implies competence throughout a professional career was no longer acceptable. To emphasise the need to enhance competence throughout a professional career, it was pointed out that, in a time of increased competition on the supply-side of legal services, professionals had to provide continued assurance of quality legal services to the public. The regulator could assist this process by supporting competence-related programs for the profession.
9. The Committee concluded that it favoured staff continuing the work begun at the bench sessions on competence by gathering and revising relevant information and materials. The Chair was requested (*in absentia*) to review the materials and settle on an approach to bring to Committee in June.

### III MATTERS BEING MONITORED BY THE COMMITTEE

#### III.1. Review by a Committee working group of the future delivery of County and District library services

10. Further to an information report presented in April, 1998, the Chair of the working group on the future delivery of County and District library services, Susan Elliott, reported a plan to table an initial report from the working group at Convocation in June, 1998. The report will provide information on libraries and library systems as well as background on the situation of the County and District Law Association libraries in Ontario.
11. The report will be tabled in preparation for bringing policy issues to Convocation in the early fall of 1998. The policy decisions will be required as the first stage of a review of future options for the design of a system of library services. The Committee will receive more details of the policy issues raised by the working group at its June meeting.

#### III.2 A Report on Developments in Relation to a Draft Rule for Mandatory Mediation in Ontario

12. Heather Ross reported on the continuing work of the Committee's ADR working group. The working group has continued to meet to consider developments in relation to the government's plan for a program of mandatory mediation which will apply to most civil actions in Ontario.
13. The Civil Rules Committee, which is reviewing a draft rule for mandatory mediation in Ontario, recently established a Protocol Sub-Committee to review materials developed by the Ministry of the Attorney General in relation to the proposed draft rule on mandatory mediation. These materials included a draft code of conduct for mediators, a system for complaints, and draft selection criteria for mediators, as well as an access policy for impecunious litigants and a plan for evaluating a program of mandatory mediation.
14. Mary Eberts has been sitting as a member of the Sub-Committee. The Sub-Committee is meeting for a third time on May 14 to discuss plans for the evaluation of pilot programs of mandatory mediation. The Sub-Committee will report to the Civil Rules Committee at that Committee's next meeting, on 21 May, 1998, at which time the draft rule on mandatory mediation may be brought to the Civil Rules Committee for approval.
15. A motion, that a further submission be made to the Civil Rules Committee if considered necessary by the Chair and the working group, was approved in principle subject to the proviso that the submission be agreed to by the Treasurer.

III.3 A Report on a Meeting of the Continuing Legal Education Liaison Committee

16. Paul Truster, the Director of Continuing Legal Education, reported on a series of three meetings planned by the CLE Liaison Group, a group made up of representatives of not-for-profit CLE providers. Mr. Truster presented the minutes of the first meeting held on 18 April, 1998. (Copy attached - see Attachment A.)
17. The meeting included proposals for future options for CLE and methods of cooperation between providers. A number of suggestions were examined in depth and linked to similar ideas first produced at a brain-storming session in February, 1998.
18. The Committee welcomed the information and suggested that information presented at the Benchers sessions on Competence should be provided to the CLE Liaison Committee.

III.4 A Report from the ADR Sub-Team of the Regulatory Redesign Team of Project 200

19. Felecia Smith, Team Leader for the ADR Sub-Team, provided two reports from the working group on ADR in the regulatory process. The working group had now met with all stakeholders, including benchers, the bar, complainants etc. and the results of the review process would be used to design the ADR program. The design would encompass the regulatory process from the intake stage to the disciplinary stage.
20. Ms. Smith pointed out that a joint meeting of the Professional Regulation Committee and the Professional Development and Competence Committee had been requested for June, 1998, so that the ADR Team could provide its final report to both Committees.

III.5 Financial Report on Costs of Implementation of Law Society's Requalification Program in 1998 and 1999

21. A report from a joint working group on Implementation of the Law Society's Requalification Policy (a working group consisting of members of the Admissions and Equity Committee and the Professional Development and Competence Committee) was brought to the Committee in January 1998. The report dealt with the implementation of the Law Society's Requalification policy, a policy approved four years previously by Convocation, in March 1994, which will require certain members (those who wish to re-enter private practice and who have not been making "substantial use of their legal skills" for five years or more) to requalify effective 1 July, 1999.
22. The Committee approved the implementation process for the Requalification policy in January, 1998 and the report was sent to the Admissions and Equity Committee and to the Treasurer's Equity Advisory Group for comment. Members of the Admissions and Equity Committee were satisfied with the report while the Treasurer's Equity Advisory Group commented that particular attention should be paid to ensuring that financial barriers not interfere with people's ability to return to private practice.
23. A report and a detailed budget for implementation of the Requalification policy for the period leading up to July, 1999, had been prepared by staff members Sue McCaffrey, Director of Professional Standards, and Paul Truster, Director of Continuing Legal Education, and was brought to Committee for review.
24. In view of an initiative by Law Society staff to cost the *entire* Legislative Reform Package, the Committee decided not to forward the budget for the Requalification portion of the package to the Finance Committee at the present time. Staff were asked to make minor changes to the budget report and forward it to the staff responsible for costing the Legislative Reform Package.

III.6 A proposal from the Canadian Council for Human Resources in the Environmental Industry to certify environmental lawyers

29th May, 1998

25. This proposal was brought by the Canadian Council for Human Resources in the Environmental Industry (CCHREI) to the Federation of Law Societies and then forwarded by the Federation to the Secretary of the Law Society.
26. Alan Treleaven, Executive Director of Education, had been in touch with the Diane Bourque of the Federation and understood that the Federation would be writing to the CCHREI to say that certifying and regulating lawyers in a practice area are matters under provincial jurisdiction. The CCHREI would have to deal with each of the provincial law societies with regard to its proposal.
27. Carol Austin reported speaking to the Executive Director of the CCHREI who assured her that little interest was expected from lawyers in the proposed accreditation. The purpose was to develop a national standard for professionals involved in environmental audits, such as engineers or other environmental specialists. Ms. Austin was invited by the Executive Director to monitor developments and has been provided with access to the CCHREI Website for this purpose.
28. The Committee supported Ms. Austin's monitoring developments and Ms. Austin also agreed to contact specialists in environmental law to ascertain their reactions to the CCHREI proposal.

.....  
Attached to the original Report in Convocation file, copy of:

Copy of a Report on a Meeting of the Continuing Legal Education Liaison Committee.

#### 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 Robert Marven Syer, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

#### ORDER

CONVOCAATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 15th day of December, 1997, 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;

29th May, 1998

CONVOCATION HEREBY ORDERS that Robert Marven Syer be suspended for a period of one month commencing at the conclusion of the current administrative suspension.

DATED this 26th day of March, 1998

“V. Krishna”  
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 Gordon Nicholas Lewchuk,  
formerly of the City of North York, a Barrister and  
Solicitor (hereinafter referred to as “the Solicitor”)

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 10th day of April, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Robert Marcantonio, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Gordon Nicholas Lewchuk 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 26th day of March, 1998

“V. Krishna”  
Acting Treasurer

SEAL - The Law Society of Upper Canada

“R. Tinsley”  
Secretary

Filed

29th May, 1998

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Bruno Mario Toneguzzi, of the City of Nepean, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 8th day of January, 1998, 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 Bruno Mario Toneguzzi 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 26th day of March, 1998

"V. Krishna"  
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 John Calvin Bracewell, of the City of Sarnia, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 14th day of January, 1998, 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;

29th May, 1998

CONVOCATION HEREBY ORDERS that John Calvin Bracewell 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 26th day of March, 1998

“V. Krishna”  
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 Farida Mir Mohammed Shaikh, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as “the Solicitor”)

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 17th day of September, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Janet Leiper, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Farida Mir Mohammed Shaikh be suspended for a period of one month commencing April 26, 1998 and indefinitely thereafter until she produces the required books and records to the Law Society.

DATED this 26th day of March, 1998

“V. Krishna”  
Acting Treasurer

SEAL - The Law Society of Upper Canada

“R. Tinsley”  
Secretary

Filed

29th May, 1998

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David Alfio Joseph Fabbro,  
of the City of Sault Ste. Marie, a Barrister and Solicitor  
(hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 27th day of January, 1998, in the presence of Counsel for the Society, the Solicitor participating by telephone conference and assisted by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that David Alfio Joseph Fabbro be suspended for a period of thirty days commencing August 1, 1998.

DATED this 26th day of March, 1998

SEAL - The Law Society of Upper Canada

V. Krishna"  
Acting Treasurer

"R. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Thomas Shane Maloney, of  
the City of Port Colborne, a Barrister and Solicitor  
(hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 13th day of January, 1998, 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;

29th May, 1998

CONVOCATION HEREBY ORDERS that Thomas Shane Maloney be reprimanded in Convocation and that he pay Law Society costs in the amount of \$750 to be paid within six months.

DATED this 26th day of March, 1998

"V. Krishna"  
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 Bernard Joseph Varcoe, of  
the City of Mississauga, a Barrister and Solicitor  
(hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 16th day of January, 1998, 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 Bernard Joseph Varcoe be suspended for a period of nine months commencing May 1, 1998, and that he pay Law Society costs in the amount of \$4,000 to be paid at \$400 per month starting one month after the conclusion of his suspension.

DATED this 26th day of March, 1998

"J. Arnup"  
Acting Treasurer

SEAL - The Law Society of Upper Canada

"R. Tinsley"  
Secretary

Filed

29th May, 1998

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David Elliott Waterhouse  
of the City of Ottawa;

AND IN THE MATTER OF an Application for Re-  
admission to the Law Society of Upper Canada.

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Admissions Committee dated the 12th day of November, 1997 in the presence of Counsel for the Society, the Applicant being in attendance and represented by Frank Csathy, wherein the Application for Re-admission was granted and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that David Elliott Waterhouse be re-admitted to membership in the Law Society of Upper Canada on the following terms and conditions:

1. The Applicant shall fully disclose his financial circumstances to the Secretary of the Law Society and they shall work out a mutually satisfactory plan whereby the Applicant undertakes to re-pay the Lawyers Fund for Client Compensation the outstanding sum of \$13,750 in full over a period of not to exceed thirty months from the date this matter is dealt with by Convocation.
2. If the Applicant returns to the private practice of law, his practice must be restricted to the same areas of law as those with which he is already familiar, being professional liability and construction insurance claims, otherwise he is to participate in the Society's requalification process to determine the nature and extent of any retraining which might be required given his absence from practice.
3. If the Applicant returns to the private practice of law, his practice must be supervised by another lawyer satisfactory to the Secretary of the Law Society for a period of one year certain and thereafter such period of time as may jointly be determined by the supervising lawyer and the Secretary to be appropriate.

DATED this 26th day of March, 1998

SEAL - The Law Society of Upper Canada

"V. Krishna"  
Acting Treasurer

"R. Tinsley"  
Secretary

Filed

29th May, 1998

CONVOCATION ROSE AT 3:10 P.M.

Confirmed in Convocation this *26* day of *June*, 1998

*Harvey T. Strosby*

Treasurer