

MINUTES OF CONVOCATION

Friday, 23rd October, 1992
9:00 a.m.

PRESENT:

The Treasurer (Allan M. Rock), Bastedo, Brennan, Campbell, R. Cass, Copeland, Cullity, Elliott, Farquharson, Feinstein, Finkelstein, Furlong, Goudge, Hill, Howland, Jarvis, Kiteley, Krishna, Lamek, Lamont, Lawrence, Levy McKinnon, Mohideen, Murphy, Murray, O'Brien, Palmer, Pepper, Scace, Scott, Sealy, Somerville, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

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"IN PUBLIC"

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The Treasurer spoke briefly to Convocation regarding meetings he had had with the County and District Associations on the Legal Aid matter and reminded the Benchers of the upcoming Plenary session of the County and District Law Association on November 12 and 13, 1992.

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MOTIONS

It was moved by Casey Hill, seconded by Susan Elliott THAT Hope Sealy be added as a member to the Professional Conduct and Discipline Policy Committees.

Carried

It was moved by Mary Weaver, seconded by Don Lamont THAT the Reports listed in paragraph 4 (Reports to be taken as read) of the Agenda be adopted.

Carried

ADMISSIONS COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of October, 1992 at 9:30 a.m., the following members were present: Ms. Mohideen (Chair), Messrs. Lerner, Lamont, Goudge and Brennan.

Also present: M.J. Angevine, D. Cushing, P. Gyulay and C. Shaw.

A.
POLICY

A.1. MANDATE OF THE COMMITTEE

- A.1.1. Your Committee recommends that all agenda items pertaining to membership, including life members, changes of name, restoration of membership, changes to rolls and records, deaths, membership in abeyance, which until now, have been reported to Convocation by the Finance and Administration Committee, be transferred to the new Admissions and Membership Committee Report. Suspension of members, applications under Rule 50, and members returning to active practice, would remain on the Finance Committee agenda, but be reported, for information purposes, to the Admissions and Membership Committee.
- A.1.2. The administration of members' records is the responsibility of the Secretary of the Law Society and the Secretary's signature is therefore required on all documents emanating from the members' records and admissions departments. It is therefore logical that these matters fall under a committee of Secretariat.
- A.1.3. Your Committee recommends that this matter be referred to the Legislation and Rules Committee to ensure that any changes are reflected in the wording of Regulation 573, Rule 36 of the *Law Society Act*.

B.
ADMINISTRATION

B.1. COMMON LAW EXAMINATION

- B.1.1. In March of 1992, Convocation adopted the recommendation of the Admissions Committee that candidates for the Common Law examination be permitted to sit the examination a third time at the discretion of the Committee. To implement that recommendation a third Common Law examination must be set. Staff have made inquiries regarding the cost of setting the examination and an estimate has been provided by the Faculty of Law, University of Toronto, which prepared the other two Common Law examinations now in use.
- B.1.2. In addition, it has been some years since the syllabus for the Common Law examination has been revised and in your Committee's view, it would be desirable to do so. An estimate of the cost of the revision (on a per course basis) has also been provided by the Faculty of Law, University of Toronto.

Both the estimates provided include an administrative charge in addition to the hourly rates for professors' time.

Your Committee considered the estimates in light of the amount set aside in the current budget for this project and recommends as follows:

- (i) that the staff consult further with the Faculty of Law to determine whether a flat fee arrangement can be negotiated for the revision of the syllabus until the budget limit for this project is reached. Should the funds allocated be insufficient to complete the task, the Committee will review the situation at that time.
- (ii) with respect to the setting of the third Common Law examination, your Committee instructed staff to consult with the Director of Legal Education regarding the possibility of the Director and his staff setting the examination and to report back to the Committee.

B.2. TEMPORARY MEMBERS

B.2.1. In February, 1992, Convocation approved the following fee structure for temporary members:

- i. Temporary members admitted between July 1st and December 31st inclusive are required to pay the full annual fee for that fiscal year.
- ii. Temporary members admitted between January 1st and June 30th inclusive are required to pay 50% of the annual fee for that fiscal year.

B.2.2. In July, 1992, Convocation approved a proposal which permits members of the Society to pay a pro rata portion of the annual fee for the fiscal year in which they are admitted.

B.2.3. In order to ensure that temporary members are dealt with in the same manner, your Committee recommends that the fee structure for temporary members be amended as follows:

Fees "Every temporary member of the Society shall pay the Annual Fee, for each financial year of the Society, in an amount to be determined by Convocation.

Temporary members admitted to the Society after July 1st of any financial year will pay the pro rata amount of the Annual Fee for the balance of that financial year."

B.2.4 This fee structure has not yet been implemented. Your Committee recommends that this matter be referred to the Finance and Administration and the Legislation and Rules Committees for approval and preparation for the necessary rule amendments.

B.3. FOREIGN LEGAL CONSULTANTS

B.3.1. In January, 1992, Convocation approved the following fee structure for Foreign Legal Consultants:

- (i) a non-refundable application fee of \$500 plus GST and;

(ii) an annual renewal fees of \$100.00 plus GST

B.3.2. The matter was then forwarded to the Finance and Administration Committees for approval and preparation of the necessary rule amendments. This fee structure has not yet been implemented and your Committee was invited to revisit the amount of fees particularly in light of the fact that the renewal fee of \$100.00 was substantially less than the fee paid by Category III members (unemployed).

B.3.3. After some discussion, your Committee now recommends that the fee structure for Foreign Legal Consultants be amended as follows:

(i) a non-refundable application fee of \$1,000. plus GST and;

(ii) an annual renewal fee of \$500 plus GST and;

B.3.4. Your Committee recommends that this matter be referred to the Finance and Administration and the Legislation and Rules Committees once again for approval and preparation for the necessary rule amendments.

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

B.4.1. The following candidates have met all the requirements to transfer under Regulation 4(1):

Diane Bourque
Shawn Harold Terry Denstedt
Donald Alan Jackson
Kenneth David Klein

Approved

B.5. DIRECT TRANSFER - QUEBEC - REGULATION 4(2)

B.5.1. The following candidate has met all the requirements to transfer under Regulation 4(2):

André Pretto

Approved

B.6. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.6.1. Bar Admission Course

B.6.2 The following candidate expects to complete the 33rd Bar Admission Course in early October, 1992 and wishes to be called to the Bar and granted a Certificate of Fitness, at Regular Convocation on October 23rd, 1992:

David Boyd Morley

B.6.3. The Committee recommends that this application be approved conditional on the candidate successfully completing the course, filing the necessary documents and paying the required fee prior to October 23rd, 1992.

B.7. Transfer from Another Province - Regulation 4(1)

- B.7.1. The following candidate having successfully completed the Statutes and Procedure in Ontario Examination, filed the necessary documents and paid the required fee now applies for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on October 23rd, 1992:

John Norman Gregory

Approved

B.8. Full-Time Members of Faculties of Approved Law Schools

- B.8.1. The following candidate, asks to be called to the Bar and admitted as a solicitor without examination under Regulation 5 respecting full-time members of approved law faculties and that she be granted a Certificate of Fitness at Regular Convocation on October 23rd, 1992

Rosemary Cairns Way

Faculty of Law,
Common Law Section,
The University of Ottawa.

Fee: \$200.00

- B.9.2. The Committee recommends that this application be approved conditional on the candidate filing the necessary documents and paying the required fee prior to October 23rd, 1992.

B.10. ADMISSION OF STUDENTS-AT-LAW

- B.10.1. The following students, having complied with the relevant Regulations, paid the required fee of \$101.00 and filed the necessary documents, now apply for admission to the Law Society as students-at-law in the Bar Admission Course:

Under Bar Admission Course Regulation 22(7)
34th B.A.C. (Entering Articles 1991)

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| 318. Evans, Siân Myfanwy | 1 yr. Memphis, USA;
B.A. Wales/77;
M.A. Toronto/87;
LL.B. Toronto/91; |
| 319. Labrosse, Marie Lise Michelle | B.Soc.Sc. Ottawa/87;
LL.B. Ottawa/90; |
| 320. Lachance, Lorne Donald | 2 yrs. Arts, York;
1 yr. Arts, Guelph;
LL.B. Ottawa/91; |
| 321. Ladekarl, Lizzi | B.Comm. Ottawa/87;
LL.L. Ottawa/90;
LL.B. Ottawa/91; |
| 322. Laframboise, Roger | B.A. Concordia/87;
LL.B. Ottawa/91; |

323. Lagasse, Jeannine Andrea B.A. Regina/88;
LL.B. Saskatchewan/91;
324. Lage, Jonathan Richard B.A. Carleton/85;
M.A. Carleton/89;
LL.B. Ottawa/91;
325. Lahaie, Diane Marie B.Comm. Queen's/88;
LL.B. Ottawa/91;
326. Lai, Betty Suk Fun 3 yrs. Commerce, Toronto;
LL.B. York/91;
327. Lake, Darcy Malcolm B.Comm. Toronto/88;
LL.B. Toronto/91;
328. Lamarre, Céline Marie B.Comm. Queen's/87;
LL.B. York/91;
329. Lancaster, Jonathan Frederic B.S. Georgia Institute of
Technology, USA/84;
LL.B. Western/91;
330. Lanzi, Simonetta B.A. Toronto/86;
M.A. Dalhousie/88;
LL.B. Western/91;
331. Laratta, Joseph Anthony Francis Cosmo Joint Committee on Accreditation/91;
332. Lash, David Ian B.A. York/88;
LL.B. Ottawa/91;
333. Latchman, Omeela Kumari B.Sc. Toronto/88;
LL.B. Toronto/91;
334. Lau, Lijim B.Sc. Toronto/88;
LL.B. Toronto/91;
335. Laughton, Douglas James B.A. Queen's/88;
LL.B. Queen's/91;
336. Lauhn-Jensen, Kristin Laura B.A. Manitoba/87;
LL.B. Manitoba/90;
337. Lavender, Thomas Stephen B.A. Toronto/85;
LL.B. Toronto/91;
338. Lavery, David Irwin B.A. Guelph/86;
B.A. Carleton/90;
LL.B. Ottawa/91;
339. Lavine, Sharon B.A. McGill/88;
LL.B. Toronto/91;
340. Law, Jacqueline Joan B.A. Lakehead/86;
B.Ed. Lakehead/87;
LL.B. Toronto/91;
341. Lawrence, Anne Louise B.A. Toronto/87;
LL.B. Western/91;

- Under Bar Admission Course Regulation 22(7)
35th B.A.C. (Entering Articles 1992)

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| 113. Fenton, Robert James | B.A. Wilfrid Laurier/89;
LL.B. Queen's/92; |
| 114. Ferland, Dominique | B.Soc.Sc. Ottawa/89;
LL.B. Ottawa/92; |
| 115. Fernandes, Daniel Candeias | B.Sc. Ottawa/89;
LL.B. Ottawa/92; |
| 116. Festeryga, David William | B.Sc. Western/86;
LL.B. Windsor/92; |
| 117. Fowler, Judy Ann | B.A. Toronto/88;
LL.B. Western/92; |
| 118. Fox, Kevin Thomas | B.A. Western/89;
B.Sc. Brock/89;
LL.B. Windsor/92; |
| 119. Franklin, Monica Helen
Martius | B.A. Toronto/82;
LL.B. Ottawa/92; |
| 120. Fraser, Victoria Lee | B.A. Queen's/89;
LL.B. Toronto/92; |
| 121. Friedman, Mark Edward | B.A. Carleton/89;
LL.B. Western/92; |
| 122. Friest, Dawn Ellen | B.A. Windsor/89;
LL.B. Windsor/92; |
| 123. Frisch, Stanley Carl | B.A. Yeshiva, U.S.A./89;
LL.B. Ottawa/92; |
| 124. Fulton, Kimberly Gail | B.A. Waterloo/89;
LL.B. Queen's/92; |
| 125. Garbaliuskas, Romas Petras | B.Sc. Toronto/89;
LL.B. Queen's/92; |
| 126. Garcea, Salvatore | B.A. Waterloo/88;
M.A. Manitoba/89;
LL.B. Windsor/92; |
| 127. Gardiner, Gillian Lesley | B.A. Toronto/88;
LL.B. British Columbia/92; |
| 128. Gaskell, Matthew Lewes | B.A. Trent/89;
LL.B. Toronto/92; |

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| 129. Gaskin, Amy Kathleen | 3 yrs. Arts, Western;
LL.B. Queen's/92; |
| 130. Gazzola, Fabbio | B.Comm. Toronto/87;
LL.B. Western/92; |
| 131. Gazzola, Lisa Michele | B.A. Western/89;
LL.B. Western/92; |
| 132. Gelblum, Michael Anthony | M.Sc. Toronto/84;
B.S.E. Princeton, USA/82;
LL.B. Toronto/92; |
| 133. Gerstheimer, Karl Horst | B.A. Windsor/88;
LL.B. Windsor/92; |
| 134. Giannotti, Anthony Louis | B.A. Windsor/86;
B.Ed. Windsor/87;
LL.B. Windsor/92; |
| 135. Giassa, Marie Therese Natalie | B.A. McGill/88;
LL.L. Ottawa/91;
LL.B. Ottawa/92; |
| 136. Gillies, Stephen Glen | B.A. Western/78;
LL.B. Windsor/92; |
| 137. Gilmore, John Robert | B.A. Western/89;
LL.B. Western/92; |
| 138. Girard, Marie France | B.A. Ottawa/90;
LL.B. Ottawa/92; |
| 139. Gmitrowski, Christine Ruth | B.A. Manitoba/89;
LL.B. Manitoba/92; |
| 140. Goetz, David Scott | B.A. McGill/88;
B.C.L. McGill/92;
LL.B. McGill/92; |
| 141. Goldberg, Ian Michael | B.A. Witwatersrand/86;
LL.B. Queen's/92; |
| 142. Golden, Amelia Gayle | B.A. Toronto/88;
LL.B. Queen's/92; |
| 143. Goldentuler, Henry | B.A. York/89;
LL.B. Western/92; |
| 144. Goodmurphy, Lisa Marie | B.A. McMaster/89;
LL.B. Queen's/92; |
| 145. Goulden, Lisa Louise | B.A. Prince Edward Island/89;
LL.B. Dalhousie/92; |
| 146. Graham, Melinda Anne | B.S.W. Manitoba/84;
LL.B. Windsor/92; |
| 147. Grant, Brian Geddes | B.A. Queen's/87;
LL.B. Toronto/92; |

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| 148. Grant, Catherine Christine | B.A. Toronto/71;
M.A. Toronto/79;
LL.B. Toronto/92; |
| 149. Grant, Heather Alison | B.A. Queen's/89;
LL.B. Dalhousie/92; |
| 150. Grasic, Marina | 2 yrs. Arts, York;
LL.B. Windsor/92; |
| 151. Green, Andrew Douglas | B.A. Waterloo/89;
LL.B. Windsor/92; |
| 152. Green, Robert Michael | Mature Student;
LL.B. Queen's/92; |
| 153. Groff, Blair Andrew Norman | B.A. Waterloo/88;
LL.B. Western/92; |
| 154. Grozinger, Karl Thomas Walter | B.A. McGill/89;
LL.B. Toronto/92; |
| 155. Guitard, Joseph Andre | B.A. Laurentian/89;
LL.B. Ottawa/92; |
| 156. Gumieny, Jacqueline Shirley | B.A. Ottawa/89;
LL.B. Queen's/92; |
| 157. Gunn, Andrea Susan | 2 yrs. Arts, Western;
LL.B. Toronto/92; |
| 158. Gurofsky, Jeremy Seth | B.A. Carleton/72;
M.A. Western/75;
LL.B. Western/92; |
| 159. Guttmann, Sandra | B.A. Ottawa/89;
LL.B. Ottawa/92; |
| 160. Hackl, Michael Joseph | B.A. Carleton/88;
LL.B. Toronto/92; |
| 161. Haley, Mary Katherine | B.A. Trent/89;
LL.B. British Columbia/92; |
| 162. Hamilton, Ember Leigh | B.Sc. Ottawa/80;
LL.B. Queen's/92; |
| 163. Hammond, Cathryn Antoinette | B.Sc. McMaster/87;
LL.B. Windsor/92; |
| 164. Hancharyk, Andrew Christopher | B.A. Ottawa/90;
LL.B. Ottawa/92; |
| 165. Hanigsberg, Julia Elizabeth | B.A. McGill/87;
B.C.L. McGill/91;
LL.B. McGill/91; |
| 166. Hanley, Kathleen Anne | B.A. York/88;
LL.B. Western/92; |

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| 167. Hanna, William Bradley | B.E.S. Waterloo/89;
LL.B. Ottawa/92; |
| 168. Harley, Thomas Albert John | B.A. Toronto/89;
LL.B. Queen's/92; |
| 169. Harris, Alan Douglas | B.A. Toronto/87;
M.A. Toronto/88;
LL.B. Toronto/92; |
| 170. Hart, Jane Stewart | B.A. Queen's/88;
LL.B. Windsor/92; |
| 171. Hartley, Doreen Elizabeth | Mature Student;
LL.B. Queen's/92; |
| 172. Hatherly, Jacqueline | B.A. New Brunswick/89;
LL.B. New Brunswick/92; |
| 173. Hayward, David Bruce | B.A. New Brunswick/85;
LL.B. New Brunswick/92; |
| 174. Headrick, Ricki Cecil | B.Comm. Saskatchewan;
LL.B. Saskatchewan/92; |
| 175. Heard, Joel Andrew | B.Comm. Queen's/89;
LL.B. Toronto/92; |
| 176. Heckadon, David Robert | B.A.Sci. Windsor/86;
B.Comm. Windsor/88;
M.B.A. Windsor/89;
LL.B. Calgary/92; |
| 177. Heeney, Timothy Charles | B.A. Toronto/88;
LL.B. Toronto/92; |
| 178. Heshka, Kristin Lynn | B.A. Manitoba/87;
LL.B. Ottawa/92; |
| 179. Hicks, Christine Edith | B.Sc. Queen's/86;
LL.B. Ottawa/92; |
| 180. Hickson, Heather Catherine | B.Sc. St. Francis Xavier/87;
LL.B. Ottawa/92; |
| 181. Hill, Margaret Elizabeth | Mature Student;
LL.B. Ottawa/92; |
| 182. Hindieh, Reem Farid Georges | B.Comm. Ottawa/89;
LL.B. Ottawa/92; |
| 183. Hluchan, Christopher Lee | B.A. Toronto/89;
LL.B. Western/92; |
| 184. Ho, Evelina | B.A. Toronto/89;
LL.B. Windsor/92; |
| 185. Hoaken, Eric Russell | B.A. Queen's/88;
M.Sc. London/89;
LL.B. Queen's/92; |

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| 186. Howie, Brock Timmins | B.Comm. Queen's/89;
LL.B. Western/92; |
| 187. Hucal, Kathryn Anne | B.A. Western/85;
LL.B. Windsor/92; |
| 188. Hulme, Barbara Jean | B.A. Carleton/88;
M.A. Carleton/89;
LL.B. Western/92; |
| 189. Huneault, Joseph Frederic
Richard | B.A. Windsor/89;
LL.B. Ottawa/92; |
| 190. Hyde, Christian Shelley Noel | B.Sc. Ottawa/91;
LL.B. Ottawa/92; |
| 191. Hyde, Elizabeth Ann | B.Ed. Alberta/85;
LL.B. Western/92; |
| 192. Inch, Marian Kathryn | B.A. Brock/79;
LL.B. Queen's/92; |
| 193. Ingram, Rachel Jane | B.A. New Brunswick/89;
LL.B. Western/92; |
| 194. Janczur, Jacek Adalbert | B.A. York/88;
LL.B. Western/92; |
| 195. Jarmoc, Margaret-Elizabeth | B.A. Ottawa/91;
LL.B. Western/92; |
| 196. Jennings, Glen Frederick | B.A. Western/89;
LL.B. Windsor/92; |
| 197. Jensen, Karen Ann | B.A. Winnipeg/86;
M.Ed. Toronto/88;
LL.B. Western/92; |
| 198. Jensen, Martin Harold | B.A. British Columbia/88;
LL.B. McGill/92; |
| 199. Johnson, John David | 2 yrs. Arts, Laurentian;
LL.B. Queen's/92; |
| 200. Johnson, Laurel Anne | B.Comm. Queen's/88;
LL.B. Queen's/92; |
| 201. Jordan, Richard Scott | B.A. Western/70;
LL.B. Ottawa/88; |
| 202. Justus, Roger Allan James | B.A. Queen's/72;
LL.B. Queen's/92; |
| 203. Kain, Andrew Malcolm | B.A. McMaster/89;
LL.B. Ottawa/92; |
| 204. Kaine, Ellen Medley | Mature Student;
LL.B. Ottawa/92; |

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205. Kaminski, Bogdan Antoni

Mature Student;
LL.B. Dalhousie/91;

Approved

C.
INFORMATION

C.1. No Matters to Report

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"R. Carter"
Chair

THE REPORT WAS ADOPTED

BUILDING

Mr. Lamont spoke to Item A-1 re: Report on use and rental policy for Law Society premises.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The BUILDING AND GROUNDS COMMITTEE begs to report:

Your Committee met on Wednesday the 7th of October, 1992 at four o'clock in the afternoon, the following members being present: D.H.L. Lamont (Chair) and J.J. Wardlaw. Also in attendance were D.A. Crosbie, D.E. Crack, and J.G. Irvine

A.
POLICY

1. REPORT ON USE AND RENTAL POLICY FOR LAW SOCIETY PREMISES

The Committee reviewed a draft proposal for a policy on use and rental of Law Society premises.

The Chair will address Convocation on this item.

23rd October, 1992

B.
ADMINISTRATION

1. 1992/93 PRIORITIES

(a) The Committee reviewed a schedule which listed capital projects approved for the 1992/93 budget together with those projects which have been deferred until 1993/94.

The Committee recommended that the projects included in the 1992/93 budget proceed with the exception of the East entrance which will be deferred to Spring 1993 at which point it will be reconsidered.

(b) Electromagnetic Fields

An investigative report with respect to Electromagnetic fields and their effect on the work environment in the Bar Admission Course wing was before the Committee.

The report includes recommendations for corrective measures to be taken in two phases as follows:

Phase I	Electrical Vault area	\$95,000
Phase II	Print Shop area	\$50,000

The Committee recommended that the Society proceed with Phase II of the proposal at a cost not to exceed \$50,000. Funding is available within the alterations and repair budget by reordering priorities.

It is further recommended that the Committee review the results of this project and based on the success of that installation make recommendations as to whether to proceed with Phase I of the report.

Approved

2. ARCHITECT'S CONTRACT

A draft contract for architect services was before the Committee.

The Committee approved the draft contract with Norr Partnership for provision of architectural services as set out therein.

C.
INFORMATION

1. FACILITIES MANAGEMENT PROGRAM

(a) Maintenance Program

The Committee reviewed memoranda from the Facilities Manager outlining the program for the year, work in progress, and work which has been completed for the 1992/93 fiscal year.

Noted

23rd October, 1992

(b) Security Program

Gail Irvine, Facilities Manager, reported orally on the progress of implementation of the security program.

Noted

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"D. Lamont"
Chair

THE REPORT WAS ADOPTED

CERTIFICATION BOARD

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday, the 8th of October, 1992 at twelve o'clock noon, the following members being present: R.D. Yachetti (Chair), A.M. Cooper, E.J. Levy, M.L. Pilkington, D.W. Scott and G.P. Sadvari. S. Thomson, of the Law Society, was also present.

Specialty Committees met as follows:

The Bankruptcy and Insolvency Law Specialty Committee met on Tuesday, the 22nd of September, 1992 at six o'clock in the evening.

The Criminal Litigation Specialty Committee met on Friday, the 25th of September, 1992 at one o'clock in the afternoon.

On behalf of the Immigration Law Specialty Committee, the Committee Chair instructed the Certification Program Administrator on decisions of that Committee on Thursday, the 1st of October, 1992 at ten-thirty in the morning.

On behalf of the Family Law Specialty Committee, the Committee Chair met with the Certification Program Administrator on Wednesday, the 7th of October, 1992 at two o'clock in the afternoon.

A.
POLICY

1. RECERTIFICATION PROCEDURE

All Specialist Standards include the following paragraph:

"Certificates of specialty shall have currency for a period of five years from their date of issue, after which they shall automatically lapse. Applicants for recertification shall be governed by the same standards then applicable for the initial certification."

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The first Specialist certificates were issued in August 1988 and will be expiring in August 1993. The Board will initiate the reapplication procedure by supplying application packages to all 'grandfathered' Specialists in the Spring of 1993.

The Board intends to offer a special two-day professional program for all Specialists in the current academic year and will be discussing this proposal in more detail at its next meeting.

B.
ADMINISTRATION

1. CRIMINAL LITIGATION SPECIALTY COMMITTEE - VICE-CHAIR

The Criminal Litigation Specialty Committee has recommended the appointment of Jeff Manishen (of Hamilton) as Committee Vice-Chair to replace former Committee Vice-Chair Casey Hill, who is now a Bencher of the Law Society.

2. PROCEDURE FOR COLLECTION OF ANNUAL FEES

The Certification Program's first annual fees will be collected in the Spring of 1993. The Board approved the proposal of the Law Society's Finance Department that, as at July 1, 1993, Certification annual fees expected in the 1993-94 fiscal year should be included on a Specialist's Law Society Annual Fees Notice, whenever during the fiscal year the member is billed.

Steps will be taken to amend the Annual Fees Notice to include the Certification Program Annual Fee.

C.
INFORMATION

1. CERTIFICATION OF SPECIALISTS

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

David G. Price (of Mississauga)
Gerald E. Taylor (of Waterloo)

The Board is pleased to report the certification of the following lawyer as a Criminal Litigation Specialist:

Alan H. Ain (of Smiths Falls)

The Board is pleased to report the certification of the following lawyers as Family Law Specialists:

H. Christina MacNaughton (of St. Catharines)
Gerald P. Sadvari (of Toronto)
Patrick D. Schmidt (of Toronto)
Albert Weisbrot (of Toronto)

The Board is pleased to report the certification of the following lawyer as an Immigration Law Specialist:

Gary L. Segal (of Toronto)

2. STATEMENTS OF REFERENCE/INTERVIEWERS' REPORTS

Statements of Reference and Interviewers' Reports for the various fields for which certification can be obtained were inconsistent in their questioning of whether the referee or the interviewer would ultimately recommend certification.

All Statements of Reference and Interviewers' Reports will now conclude with the following question: "In your opinion, does the applicant have the skill, aptitude and experience in [area of law] to justify identifying the applicant to the public as a certified Specialist?" The assessor will be required to answer "yes", "no" or "unknown".

3. REQUESTS FOR INFORMATION ON SPECIALISTS

The Administrator informed the Board that, in addition to the areas of law for which Specialists are now being identified (Civil, Criminal, Family, Immigration, Intellectual Property), members of the public, the legal profession and the media have sought Specialists in a wide variety of fields over the past year.

In addition to calls from non-lawyers seeking an expert to assist with a particular problem, the Certification Program has received calls from lawyers seeking, on behalf of their clients, an expert in a field unfamiliar to them, from lawyers seeking to junior with a lawyer who specializes in a field of particular interest, and from lawyers in other jurisdictions seeking an Ontario expert in a given field. A few lawyer callers have sought to consult with Specialists for career planning purposes. Additionally, libraries have indicated that requests from users for a list of lawyer Specialists are not uncommon. Researchers and journalists have also sought to interview legal Specialists on a variety of issues.

4. PHILOSOPHICAL CONSIDERATIONS

The Board discussed some of the fundamental problems facing the Certification Program, including perceptions and misconceptions that the program is uneven and caters to big city lawyers.

Members were of the view that the Law Society has a duty to tell the public what lawyers do well and that it must implement Specialties where there is the most obvious public need. This may include a reexamination of the sub-specialties question, particularly in the civil litigation field.

There was agreement that it should not be easy to qualify as a Specialist and that there should not be a distinction, in terms of application of the standards, between different geographic regions.

It is clear that the profession should be advised of the Board's commitment to see a program that is of benefit to the public and to the profession, not one that creates barriers or elite groups.

The public should be counselled on how to assess when a general practitioner could be consulted and when a Specialist would be required.

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A move towards a Specialist preparatory program for younger lawyers remains a goal of the Certification Board in the long run.

5. INTELLECTUAL PROPERTY LAW SPECIALISTS

On April 24, 1992, the Intellectual Property Law Specialty Program was approved in Convocation.

The Intellectual Property Law Specialty Committee is now ready to consider applications. Lawyers, if qualified, may be designated as Specialists in Patent Law, Trade-mark Law, Copyright Law, or any combination thereof. Those who qualify in all three may designate themselves as Specialists in Intellectual Property (Patent, Trade-mark, and Copyright) Law or simply as Intellectual Property Law Specialists.

An application package, containing details about Committee membership, application procedure, fees, the Intellectual Property Law Specialty Standards and the application form may be obtained from the Certification Program office.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"R. Yachetti"
Chair

THE REPORT WAS ADOPTED

CLINIC FUNDING COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of LEGAL AID begs leave to report:

CLINIC FUNDING

The Clinic Funding Committee submitted a report to the Director recommending funding for various projects.

The Director recommends to Convocation that the report of the Clinic Funding Committee dated October 21, 1992 be adopted.

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Attached is a copy of the Clinic Funding Committee's report.

ALL OF WHICH is respectfully submitted

Robert L. Holden
Director
Legal Aid

October 21, 1992

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

The Clinic Funding Committee met on October 16, 1992. Present were:
Philip Epstein, Q.C., Chair, Joan Lax, Jim Frumau, Thea Herman.

A. DECISIONS

1. Supplementary legal disbursements

Pursuant to s.6(1)(m) of the Regulation on clinic funding, the Committee has reviewed and approved applications for supplementary legal disbursements as follows:

Northumberland Community Legal Centre - up to \$2,500
Community Legal Services (Ottawa-Carleton) - up to \$2,500
Kinna-aweya Legal Clinic - up to \$5,000
Clinique juridique Stormont, Dundas & Glengarry Legal Clinic
- up to \$5,000

2. Court costs

Pursuant to s.10 of the Regulation on clinic funding, the Clinic Funding Committee has approved an application for the payment of court costs from the following clinic:

Downsview Community Legal Services - up to \$350
Advocacy Resource Centre for the Handicapped - up to \$5,400

3. Incorporation

a. Elliot Lake & Northshore Community Legal Clinic

Pursuant to the direction of Convocation, the Clinic Funding Committee has reviewed, as to name and objects, an application for incorporation from the above-named clinic. The Committee recommends Convocation's approval of this application.

4. Security Systems

After conducting a thorough survey of clinics in the Metropolitan Toronto area to determine existing security factors, nine clinics were identified at high risk. The Clinic Funding Committee has therefore approved the purchase of nine alarm systems, in an amount up to \$15,184.

ALL OF WHICH is respectfully submitted

"P. Epstein"
Chair

THE REPORT WAS ADOPTED

COMMUNICATIONS COMMITTEE

Ms. Elliott spoke to Item B-1 re: Benchers Bulletin.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of October, 1992, the following members were present: Denise Bellamy (Chair), Susan Elliott, Allan Lawrence, Ross Murray, Julaine Palmer, and Stuart Thom. Also in attendance: Carolyn Ateah, Theresa Starkes, Richard Tinsley and Gemma Zecchini.

B.
ADMINISTRATION

1. Benchers Bulletin

The first Benchers Bulletin, which replaces the Proceedings of Convocation, was mailed to the profession on October 5th, 1992.

The Committee decided that an Editorial Board for the Benchers Bulletin should be in place, consisting of the Treasurer, the Chair of the Communications Committee, the Director of Communications and the Secretary of the Law Society.

Benchers are invited and encouraged to bring forward items that should be included in the Bulletin. To ensure timely inclusion in the Benchers Bulletin, Benchers are asked to notify the Director of Communications of their suggestions as soon as possible after each committee day.

The Committee also agreed to encourage Benchers to provide suggestions for improvement of the Bulletin to any member of the Communications Committee.

C.
INFORMATION

1. Dial-A-Law Options Paper

The Communications Department is currently preparing an options paper concerning the future operations of Dial-A-Law for consideration by the Committee in November. The paper will outline the various options available for making Dial-A-Law (DAL) a partial cost-recovery, cost-neutral or profit program. In addition, the paper will explore the impact these options will have on the issues of access and advertising. The results of a recent internal DAL survey indicate that 75 per cent of callers would be willing to pay a small charge for calling DAL and would consent to that charge appearing on their monthly phone bill. Relevant cross tabulations as to what variances exist with respect to sex, income, education, age, geographic location and employment are now being compiled.

2. Lawyer Referral Service Options Paper

The Communications Department is currently conducting research as to possible options for the future operations of the Lawyer Referral Service. In a paper for consideration by the Committee in January, staff will outline the various options available for making Lawyer Referral a partial cost-recovery, cost-neutral or profit service.

The options paper will address the following matters:

- * the experience and practices of other Canadian and U.S jurisdictions that have Lawyer Referral Services
- * funding options: annual fee for LRS members, fee for clients, combination of member and client fee, percentage of the fee generated for the lawyer by the client referred by LRS
- * method of payment for referrals e.g. credit card, cash, cheque or money order (An internal LRS survey which will be conducted in two weeks will ask clients whether they would be willing to pay \$20 per referral and what method of payment would be most convenient. The implications of pre-payment for referrals will have to be considered for those 50 per cent of clients who are not from the Metro area and who may not have access to a credit card.)
- * advertising and marketing (If the service is to generate revenue, a greater focus and commitment to advertising and promotion will be required.)
- * access to justice (Charging a fee will necessarily exclude certain segments of the public from accessing our service. Our internal survey will give us a demographic profile on those individuals who indicate they would not be willing to pay a fee for a referral. What policy if any should be considered for waiving fees and how do we ensure that it is not abused?)

3. Lawyer Referral Service and Dial-A-Law Notices to the Profession

As shortages arise in the number of lawyers available to take client referrals in certain communities, the Communications Department has been placing the attached Lawyer Referral Service notice ("An Appeal to the Profession") in the Ontario Reports. (See A-1) The notice has been highly successful in recruiting participants the Lawyer Referral Service. The Committee has decided to continue to use the notice when the need arises in the future and has suggested the following changes are made to the advertisement:

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- * the title of the advertisement will be changed to "Lawyers Wanted"
- * the content of the advertisement will be changed to make it more appealing to the legal profession.

The Committee also asked the Communications staff to send out an information package outlining the mandate of the LRS and where service gaps exist. The package will be directed to the Benchers and County & District Law Association Presidents in areas experiencing service gaps.

The Communications Department often has need of the services of lawyers specializing in certain areas of the law for the purpose of drafting Dial-A-Law scripts. The attached notice (A-1) similar to the LRS advertisement is placed in the Ontario Reports when such need arises. The Communications Committee approved the continued use of the notice for future insertions.

4. Committee Comments Regarding Reports on the Perceptions of the Public and Profession

The Communications Committee previously requested by Memorandum that each Committee consider whether there are matters arising from the report entitled "Public and Lawyers' Perceptions of and Attitudes Toward the Law Society of Upper Canada, Communications, Programs and Policy Issues" which should be brought to the attention of the Communications Committee. The responses received to date are summarized below. The Communications Department will be in contact with those Committees which have not yet responded to this memorandum. Those Committees which have not fully considered the communications implications of the surveys will be contacted by the Communications Department and asked to revisit specific sections of the surveys and reconsider their response.

The Certification Board members are of the opinion that there is an urgent need to provide an update to the profession about the progress of the Certification Program, some of the recurring issues and concerns pertaining to the certification of specialists and the response of the Board to those concerns. A proposal for reporting on and marketing the Certification Program is being drafted. It has also been recommended that articles discussing the impact of the certification of Specialists in the practice of law should be provided to various legal publications in the coming months.

The Women in the Legal Profession Committee determined there are matters which require action. There was some indication in the survey of lawyers that "quality of life/income" was considered a pressing concern by some lawyers (4%). Further 50% of those lawyers felt that the Law Society was addressing this concern poorly. Considerations regarding lawyers' quality of life are part of the mandate of this Committee and are being addressed as part of efforts to consider and promote the place of women in the profession. By agreement, the Research and Planning Committee will consider the study of long hours that are reported to be required by lawyers. Consequently, no special action is required from your Committee as a result of the survey.

The Professional Standards Committee recommends that communicating the existence and the activities of the Professional Standards Committee to the public and the profession is a matter of high priority, but issues such as budget, timing, staff resources and emphasis must be considered. The advice of the Director of Communications will be sought, in order to ensure that the proposed method of communication is effective.

Further, existing resources, such as The Adviser, are available for communicating with the profession and would take into account budgetary considerations. The survey shows that not all members read The Adviser; it should be examined to assess how well it communicates with members, and how it can be improved, with respect to readership, format, frequency of publication and content. The Adviser can be used to communicate issues of special interest which cut across the lines of the profession.

A section of The Adviser should be dedicated to addressing issues raised by the survey, such as the need for lawyers to communicate with their clients, and an explanation of techniques that will improve solicitor-client communications, including a list of "do's and don't's".

Alternately, or in addition, a one-page bulletin format could be used, addressing each issue individually, for greater impact on the profession. Such a bulletin could be included in other Law Society mailings to the profession. Again, the advice of the director of Communications will be requested.

The Law Society has a number of resources available for training members in communication techniques, including Bar Admission Course materials and videotapes on interviewing and effective writing, and programs on these topics offered by the Continuing Legal Education Department and available on video or audio tape. Information about these resources should be communicated to the profession.

The Unauthorized Practice Committee discussed the need to publicize matters relating to the unauthorized practice of law. For example, members of the public are under the impression that the recommendations contained in the Report of the Ianni Task Force on Paralegals have the force of law. They are unaware of the risk involved in hiring agents who lack proper legal training. The public appears uninformed about several successful prosecutions recently conducted by the Law Society.

Your Committee considered the question of public awareness of Law Society prosecutions and recommends that the Communications Department distribute press releases prepared by Law Society prosecutors and assist in any way in the distribution of information about the unauthorized practice of law.

The following Committees reviewed the survey and determined they had no recommendations to make to the Communications Committee: The Lawyers Fund for Client Compensation, Legal Education, Legislation and Rules, Discipline, Insurance and French Language Services.

4. Media Activity

The following list indicates the most popular media issues for the month of August in order of priority: access to the legal profession, Canadian Bar Association, Canadian government, Canadian Judicial Council, discipline, incorporation of law firms, legal marketing, Smith/Lyons law firm, self government, legal fees, lawyers image, O'Donoghue matter, problems with lawyers, legal aid, legal aid billings, legal clinics, and miscellaneous items.

5. Call Statistics

Dial-A-Law call statistics from January 1, 1992 to September 30th, 1992 indicate an 11% reduction in calls from the same period last year. Calls for this period total 29,478 or 904 calls per day.

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The Lawyer Referral Service is experiencing a 22% increase in calls. Calls to the service so far this year total 25,664 or 679 calls per day.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"S. Elliott"
for Chair

THE REPORT WAS ADOPTED

COUNTY AND DISTRICT LIAISON COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of October, 1992 at 11:30 a.m., the following members being present: R. Bragagnolo (Chair), P. Epstein, A. Feinstein, and County and District Law Presidents' Association Executive: H. Arrell, S. Foley, R. Gates, M. Hennessy, D. Lovell and N. Mossip. Also in attendance were: M. Angevine, G. Howell and A. John.

1. AGENDA FOR PLENARY SESSION OF THE COUNTY AND DISTRICT LAW ASSOCIATION ON NOVEMBER 12 AND 13, 1992

A complete Agenda for the Plenary Session is not yet available. Benchers are advised, however, that the following matters have been scheduled.

Thursday, November 12, 1992 - 11 a.m. - Legal Aid Resolution

2 p.m. - Rule 5 Conflicts
- Mandatory Continuing Legal Education

Venue: The Downtown Holiday Inn

Friday, November 13, 1992 - a.m. - Libraries
- C.I.B.C. Home Purchase Package Plan

Venue: Osgoode Hall

The Committee urges all Benchers to make a special effort to attend the Sessions on Thursday, November 12, 1992. All Committees are requested, where possible, to deal only with urgent business on that date to allow additional time for Benchers to attend the Plenary.

23rd October, 1992

2. RESOLUTIONS TO BE DISCUSSED AT THE NOVEMBER, 1992 PLENARY

The County and District Law Presidents' Association Executive has prepared several resolutions for consideration by the Presidents at the November Plenary regarding the following issues:

1. Legal Aid
2. Benchers Election Reform
3. Rule 5
4. Mandatory Continuing Legal Education

Copies of the draft Resolutions are attached.

ALL OF WHICH is respectfully submitted

DATED the 23rd day of October, 1992

"R. Bragagnolo"
Chair

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

Item 2 - Copies of Resolutions to be presented for consideration at the November Plenary session. (pages (12))

THE REPORT WAS ADOPTED

DISCIPLINE POLICY COMMITTEE

Mr. Strosberg spoke to Item A-A.1 re: Discipline management procedures.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of October, 1992, at one-thirty in the afternoon, the following members being present:

H. Strosberg (Chair), N. Finkelstein, J. Klotz, J. Lax, D. O'Connor, J. Palmer, D. Scott, S. Thom, and R. Murray.

S. Hodgett, S. Kerr, G. MacKenzie, G. Macri, R. Tinsley, J. Yakimovich also attended.

Note: Amendment, see page 128

A.
POLICY

A.1. DISCIPLINE MANAGEMENT PROCEDURES

- A.1.1. The Committee had before it a report by Harvey Strosberg and Dennis O'Connor outlining a proposal for changes in Discipline Procedure. The proposal is made in light of the fact that the discipline process is unlikely to be changed by legislative amendment before the spring of 1993.
- A.1.2. The fact that there are at present no time limitations governing the discipline process creates at least two serious problems: first, the process provides for no objective basis for measuring and circumscribing delay; second, the process is not readily amenable to the imposition of a computer system designed to manage and move the caseload.
- A.1.3. In the report to the committee a discipline management procedure capable of implementation without legislation was outlined. It is envisioned that the management procedure will speed and streamline and resolve many of the failings of the current process.
- A.1.4. The Committee discussed the proposal. In light of that discussion the memorandum has been revised. This revised memorandum has been provided as Attachment A. Your Committee recommends that the proposals in paragraphs 1-51 of the memorandum be adopted in principle. The Committee is awaiting a legal opinion on the balance of the proposals contained in the memorandum.

B.
ADMINISTRATION

B.1. RECORDS OF UNSUBSTANTIATED COMPLAINTS

- B.1.1. This matter came before the Committee as a result of concerns expressed by a member of the profession. The concern relates to the manner in which the Law Society maintains records of complaints which have not proceeded beyond the staff level. Records are maintained on the Society's computer database indicating that a complaint was made about a member. The file will have the notation "insufficient evidence of misconduct" or "file closed." The member is concerned that these records may detrimentally affect a lawyer's record with the Society. This may be so, he maintains, even though the complaints might be unsubstantiated, frivolous or vexatious.
- B.1.2. The records are not used for the purposes of discipline proceedings. The information is used, however, for other purposes at the Law Society, for example during the certification process and during practice review. The Committee is concerned about the use of this information.
- B.1.3. David Scott was appointed to, along with the staff, perform a brief analysis of the information maintained about unsubstantiated complaints. The Committee will receive a report on what information is kept about a lawyer subject to a complaint, how it is used, how it is controlled and how the concerns expressed by the member can be addressed.

B.2. PUBLIC COMMENT BY BENCHERS ABOUT DISCIPLINE DECISIONS

- B.2.1. At the May 14 meeting of the Committee, the Chair was authorized to appoint a Subcommittee to examine the extent to which Benchers, both as a matter of law and a matter of policy, should comment publicly on discipline decisions, including decisions of Convocation with respect to penalty.
- B.2.2. At the September 10 meeting, members debated whether this issue should be dealt with at all by this Committee. The Subcommittee was not appointed on September 10 in order to allow the Committee to revisit the matter.
- B.2.3. Your Committee considered the matter and decided that the Subcommittee will be appointed as this is an issue which should be examined.
- B.2.4. Issues which the Subcommittee will examine include the following:
1. whether a distinction should be drawn between the freedom of Benchers to offer public comment on issues of general policy and their freedom to comment on issues arising in particular discipline cases, in which Benchers serve in a quasi-judicial capacity;
 2. whether a distinction should be drawn between issues of policy which arise in the context of individual cases and issues particular to individual cases (eg. penalties);
 3. whether there is a need to address confidentiality of information obtained by Benchers in the course of a disciplinary proceeding;
 4. whether there are authorities which address the issues; and,
 5. whether the Rules of Professional Conduct and the Commentaries are of assistance in resolving the issues.

C.
INFORMATION

C.1. STAFF REVIEW OF COMMUNICATIONS SURVEY

- C.1.1. At its June meeting, staff were asked to identify information and issues arising from the survey that relate to the Committee and its work.
- C.1.2. In summary, the survey reveals the following information of interest to this Committee:
- a) 1/3 to 1/2 of people surveyed described lawyers as poor communicators while most saw the ability to communicate as important.
 - b) 51% say solicitors do not keep clients informed of legal costs and 48% claim lawyers fail to explain to clients what steps they are taking on the client's behalf and why.

- c) 44% say lawyers needlessly complicate client problems.
- d) 79% believe that most people are intimidated by lawyers.
- e) When asked to rate the most important factors in choosing a lawyer, the top 2 considerations were communication skills and costs.
- f) 35% characterized the Law Society's performance as either fair or poor
- g) 45% of lawyers surveyed held the same view.

Discussion

- C.1.3. The findings contained in the surveys are of most value for this Committee's purposes when applied to the operations of the Complaints Department.
- C.1.4. Considerable time is spent in the survey canvassing the public's views on issues such as legal costs, communication problems with lawyers and client expectations upon retaining a lawyer. In general, the survey found that clients often had unreasonably high expectations about what a lawyer was capable of doing for them. At the same time clients expected to be kept well-informed by their lawyer about their case and were very fees-conscious. The survey also suggests that lawyers are seen as poor communicators who do not deliver services commensurate with the fees charged.
- C.1.5. This state of affairs is made worse by the fact that many people appear to be intimidated by lawyers.
- C.1.6. The public survey's findings about fees and communications problems between lawyers and the public are consistent with information compiled by the Society's Complaints Department. Communication problems and fees disputes rank first and third respectively as the primary cause for complaints being made. Miscommunication has been identified as the primary cause of complaints in over 20% of all complaints lodged with the Law Society since 1987. Allegations that a lawyer's fee was excessive was the primary cause of complaint over 12% of the time. In numerous other cases, these complaints are made combined with others which become the primary focus of investigation.
- C.1.7. For the most part, complaints of this kind are relatively minor and are not indicative of a lawyer who is acting unethically. As well, the ability of the Law Society to intervene in any positive way in these matters is very limited.
- C.1.8. It is submitted that the best way to address these types of complaints is to correct the circumstances which give rise to them. Both the Bar and the Law Society have an interest in developing practice procedures aimed at preventing complaints of this kind.
- C.1.9. In response, in part, to the findings of the public survey, the Society is significantly expanding the number and scope of periodical publications circulated in the profession. One such publication is an expanded version of the Adviser which will contain regular items prepared by staff in the Complaints, Audit and Standards Departments as well as the Practice Advisory Service. Common practice problems and the means by which to avoid them will be a central and recurring theme of the Adviser.

C.2. SUBCOMMITTEE ON DISCLOSURE TO THE POLICE

C.2.1. The Chair has appointed a Subcommittee to revisit the issue of when the Law Society should disclose information it has obtained to the police. The Chair will act as Chair to the Subcommittee. The following have agreed to serve on the Subcommittee: The Hon. John Arnup, Casey Hill, Gavin MacKenzie and Marc Rosenberg.

C.2.2. This Subcommittee will also consider the formulation of criteria for use by the Chair and Vice-chairs for the authorization of complaints and audits.

C.3. AUTHORIZATION OF DISCIPLINE CHARGES

C.3.1. Once a month, the Chair and/or one or both of the Vice-Chairs of your Committee meet with the Complaints and Discipline staff to consider requests for formal disciplinary action against individual lawyers.

C.3.2 The following table shows the number of requests made by Discipline, Complaints and Audit staff for the month of October 1992.

	<u>Sought</u>	<u>Obtained</u>
<u>September</u>		
Discipline	8	8
Complaints	20	17
Audit	2	2

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Total number of charges authorized to date for 1992:

January	20
February	16
March	31
April	19
May	37
June	30
August	34
September	20
October	27
Total:	234

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"H. Strosberg"
Chair

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

A-Item A.1. Memorandum from Mr. H.T. Strosberg and Mr. Dennis O'Connor to
Discipline Policy dated October 13, 1992 re: Discipline
Procedure. (Marked A-1 - A-13)

Convocation debated on the matter and the following amendments were made:

Paragraphs 19 and 20 of the Proposals

That the word "issuance" be deleted and replaced with the word "delivery".

Paragraph 45 of the Proposals

That paragraph 45 be amended to read: The Procedural Management Benchers may by order "(a)" extend or abridge any time prescribed by these rules or "(b)" dispense with strict observance of any requirements prescribed by these rules" on such terms as are just.

Paragraph 19 of the Proposals

That the "decision" include the Recommendation as to Penalty.

Paragraph 15(a) of the Proposals

The importance of pre-trials was discussed and the Chair was asked to take it into account in developing the process.

Paragraph 16 (c) and (d) of the Proposals

That the word "counsel" at the beginning of paragraph 16 (c) and (d) be deleted and replaced with the word "parties".

It was moved by Harvey Strosberg, seconded by Neil Finkelstein that the Proposals be approved in principle with an implementation date of February 1st, 1993 and after input from the Benchers and the profession a re-draft be circulated to the Bench in January 1993.

Carried

The Report was amended to show that Mr. Yachetti was present at the Discipline Policy meeting on October 8th, 1993.

THE REPORT AS AMENDED WAS ADOPTED

.....

Convocation adjourned for a brief recess.

Convocation resumed in public.

CALL TO THE BAR

The following candidate was presented to the Treasurer and Convocation and was called to the Bar, and the degree of Barrister-at-Law was conferred upon him by the Treasurer.

John Norman Gregory

Special, Transfer, British Columbia

.....

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 8th of October 1992, the following persons being present: Stephen Goudge (Chair), Paul Copeland, Dean Jeff Berryman, Thea Herman (for George Thomson), Andrew Ranachan, Bernd Christmas (AASSC), Rose Shawana (AASSC), Donald Crosbie, Mimi Hart, Alexis Singer and Heidi Francis.

C.
INFORMATION

1. Treasurer's Letter of October 2, 1992 Concerning Priorities

Education Initiatives:

The committee hopes to present a proposal to Convocation in February 1993 on a program to provide alternative education for foreign trained lawyers who require additional education to meet the qualification requirements of the Joint Accreditation Committee. The committee does not anticipate the need for additional funds in preparation of its report, however, the implementation of the proposal will likely require a significant sum of money. We are currently negotiating with the Ministry of Citizenship to determine whether funding will be available from that source or from some other government source.

Students Seeking Articles:

The committee wishes to develop proposals concerning its role and the role of the Law Society generally in dealing with students seeking articles and employment following call to the bar. The work on this matter is too preliminary to predict a completion date or to determine what cost may be involved. It should be noted that the Legal Education Committee is also looking at the issue of students seeking articles.

Employment Equity Plan:

The committee has targeted the February or March 1993 Convocation to present to Convocation an Employment Equity Plan for the employees of the Law Society. The committee understands that sufficient funds are available to cover the cost of this project.

2. Attorney General's Initiatives - Stephen Lewis Report

Stephen Goudge will liaise with the co-chairs of the provincial task force and report back to this committee. The committee will provide input on various matters such as systemic barriers to and in the legal profession.

3. Education Equity Awards Subcommittee

Due to time constraints, Denise Bellamy has stepped down from this subcommittee and will be replaced by Paul Copeland. Butterworths must be involved.

4. Meeting with the Law Deans

A dinner meeting between the law deans and the committee members will be held on November 12, 1992. Unfortunately, this date coincides with the Legal Aid dinner but it is the only available date this year and the meeting with the law deans is considered an important event for the Equity Committee.

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5. Summer Student Projects

Report on Aboriginal Articling Students Support Council (AASSC)

Rose Shawana reported on two matters: the organization of AASSC to assist law students and Bar Admission Course students; and the completion of the AASSC project which was the production of a student guide to living in Metropolitan Toronto. It is hoped to distribute the guide widely in the country so that Aboriginal students coming to Toronto may have some preliminary information about the Metropolitan area.

Report on Black Law Students' Association of Canada (BLSAC)

The Under Treasurer reported that the BLSAC project involved a questionnaire of Black law students and Black lawyers recently called to the bar. The statistical analysis of the information is still underway. The report should be ready for the November 1992 meeting of the committee.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October 1992

"S. Goudge"
Chair

THE REPORT WAS ADOPTED

FINANCE AND ADMINISTRATION COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs to report:

Your Committee met on Thursday, the 8th of October, 1992 at three o'clock in the afternoon, the following members being present: J.J. Wardlaw (Vice-Chair in the Chair), A. Feinstein (Vice-Chair), R.C. Bragagnolo, P.G. Furlong, D.H.L. Lamont, D.J. Murphy, P.B.C. Pepper and M.P. Weaver. Also in attendance were D.A. Crosbie, D.E. Crack, M.J. Angevine and D.N. Carey.

B.
ADMINISTRATION

1. FINANCIAL REPORT

The Director presented the highlights memorandum for the three Law Society Funds together with supporting financial statements for the 3 months ended September 30, 1992.

Approved

2. LAW SOCIETY SEXUAL HARASSMENT POLICY - FUNDING FOR EMPLOYEE TRAINING

The Committee is asked to approve funding in the amount of approximately \$5,000 for employee training in respect of the Society's Sexual Harassment Policy. Funds are available in the Human Resources budget for this programme.

A memorandum from the Under Treasurer was before the Committee.

Approved

3. EXTENDING EMPLOYEE BENEFITS TO SAME SEX SPOUSES

At its September meeting the Committee discussed the issue of extending employee benefits to same sex spouses.

The matter was brought to prominence because of the recent ruling of the Human Rights Commission in the Leshner case.

The Committee decided in September not to pursue the matter until the question of whether an appeal would be made, however, it has been announced that the Government will not launch an appeal.

Senior management has discussed the matter and is of the view that in light of these facts, the Society will have to make such benefits available.

Our benefits consultants, MLH & A Limited, have notified us that this provision can be made to our existing plan with Sun Life Insurance at no extra cost.

The Committee was asked to approve this amendment to our employee benefit program.

Approved

4. VOICE MAIL

In March the Committee approved the acquisition of voice mail for the Society at a cost to be in the range of \$70,000 - \$90,000. Further study was to be done to obtain final quotes to be approved by the Chair before proceeding. Since that time a full examination of available systems has been made with the recommendation to acquire the Meridian Mail system to be supplied and installed by T.T.S. Limited.

However, because of additional costs for back up power supply and automated voice announcement and the cost for an independent consultant to assist with effective implementation, the cost will be approximately \$116,000, \$26,000 in excess of the limit originally contemplated. The additional cost can still be accommodated within the budget for telephone services.

This was outlined in a letter from the Director of Finance and Administration to the Chair dated October 16, 1992 which was before the meeting. The Chair has approved that the Society proceed with this acquisition subject to the Committee's further approval.

Approved

5. CANADIAN INSTITUTE OF RESOURCES LAW - REQUEST FOR FUNDING

The Canadian Institute of Resources Law at the University of Calgary and the Faculty of Law (Common Law) at the University of Ottawa are sponsoring a conference on the theme of Law and Process in Environmental Management to be held May 13-14 in Ottawa.

23rd October, 1992

In his letter dated September 18, 1992, Steven A. Kennett, a Research Associate at the Canadian Institute of Resources Law, requests consideration for funding and states "this conference will have a significant legal content and will be relevant to lawyers in private practice, government, industry and non-government organizations". No specific amount of funding is mentioned. A copy of his letter as well as an outline of the conference objectives was before the Committee.

The Committee was asked to consider this request.

Denied

6. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 6 members who have not complied with the requirements respecting annual filing and who have not paid their late filing fee.

In all 6 cases all or part of the late filing fee has been outstanding four months or more. The 6 members owe \$8,130 of which \$2,160 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 6 members be suspended on October 23, 1992 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see page 136

7. SUSPENSION OF MEMBERS - ERRORS AND OMISSIONS LEVY

There are 2,311 members who have neither paid their Errors and Omissions Insurance Levy nor filed a claim for exemption for the period July to December 1992. Two notices have been sent.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on the 23rd of October 1992 effective the 2nd of November 1992.

The Committee was of the view that because only two notices were sent this year compared to four in previous years, and, notwithstanding that special notice was placed in the Ontario Reports on September 4, 1992, that a further letter together with a statement of the levy owing be sent to each of the members on the list.

The letter is to advise them that their names will be before Convocation on October 23, 1992 for suspension on November 1, 1992.

Approved

Note: Amendment, see page 136
Motion, see page 137

8. MEMBERSHIP UNDER RULE 50

(a) Retired Members

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

Hamilton
London
Scarborough
North York
Queensville, ON
Toronto

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

Toronto

Approved

Stephen Baker Eprile of Toronto has applied for permission to resign his membership in the Society and has submitted a Declaration in support. Mr. Eprile was called to the Bar on the 30th of March 1990 and has never practised law since the time of his call. For this reason, the member has requested that he be relieved of publication in the Ontario Reports.

Approved

On October 1st, 1992 the Society entered into an Interest Rate Swap agreement with the TD Bank. The transaction was approved in principle by Convocation in July 1992 and by the Chair of Finance, Mr. Howie, after consulting with him. Martin, Lucas and Seagram (our independent investment counsellors and Ernst & Young (our external auditors) have both been consulted and agree with this initiative as one which strikes a balance by taking advantage of medium term interest rates, which are at 20 year lows, and establishing a "known" commitment for financing which is within the Society's capacity to budget and manage effectively. The terms of Society's swap agreement are as follows:

Notional amount: \$6,000,000 amortized as per schedule (see separate attachment)
Trade date: September 25, 1992
Effective date: October 1, 1992
Termination date: October 1, 1997
Fixed rate: 7.80% +.50% stamping fee = 8.30%

LSUC budgeted \$900,000 for 1992/93 as interest expense on its borrowings. Locking in at this total fixed rate should reduce our interest rate expense to approximately \$750,000.

23rd October, 1992

An interest rate swap is an agreement between two parties (counterparties) to pay each other a certain rate of interest for a specific period of time (the "term"), on an agreed upon principal amount (the "notional principal"). In the Society's situation one counterparty is the TD Bank and the Society is the borrower. The Society has agreed to pay a fixed rate of interest over the term of the swap while the TD Bank has agreed to pay a floating rate of interest over the term of the swap. The fixed rate is determined as a spread over the yield on the current similar term Government of Canada bond. The floating rate is most often based on the rate of interest paid on Bankers Acceptances ("BAs"). The counterparties agree on how often they will actually exchange interest flows. Then, on every settlement date (the Society's is semi-annually) the interest owed by each counterparty to the other is calculated and the net amount is exchanged between them. This process continues until the maturity of the swap. The net effect of the interest rate swap is that the Society is able to manage its exposure to movements in interest rates.

Further details on the swap agreement were before the Committee.

Noted

2. LIFE MEMBERS

Pursuant to Rule 49, the following are eligible to become Life Members of the Society with an effective date the 15th of October 1992:

William Frederick Lees Hamilton
John Donald MacKenzie Pollock Willowdale
* David Howard Woodhouse Henry Toronto

* also see Membership Restored

Noted

3. CHANGES OF NAME

(a) Members

<u>From</u>	<u>To</u>
Joanne Marie <u>Cuccia</u>	Joanne Marie <u>McIntyre</u> (Marriage Certificate)
Giulia <u>Falbo</u>	Giulia <u>Falbo Ahmadi</u> (Marriage Certificate)
Kay <u>Preston</u>	Kay <u>Preston-McKee</u> (Marriage Certificate)
Lynda Ann <u>Toms</u>	Lynda Ann <u>Coulter</u> (Marriage Certificate)

Noted

23rd October, 1992

4. MEMBERSHIP RESTORED

The following member gave notice under section 31 of The Law Society Act that he has ceased to hold judicial office and wishes to be restored to the Rolls and records of the Society:

Effective Date:

* David Howard Woodhouse Henry October 30, 1991
(Ontario Court of Justice, General Division)

* also see Life Members

Noted

5. ROLLS AND RECORDS

(a) Deaths

The following members have died:

John Graham McDonald Calgary, AB	Called January 20, 1955 Died June 10, 1992
Christopher Tracy Loughrin Toronto	Called April 19, 1963 Died August 24, 1992
Arthur John Cassels Anglin Don Mills	Called June 17, 1937 Died September 10, 1992
Sven Hendric Dohnberg St. Catharines	Called March 22, 1968 Died September 13, 1992
Paul Joseph James Martin Windsor	Called September 20, 1928 Died September 14, 1992

(b) Membership in Abeyance

Upon her appointment to the office shown below, the membership of the following member has been placed in abeyance under section 31 of The Law Society Act:

Wendy Elizabeth King Toronto	Called April 6, 1983 Appointed to the Ontario Municipal Board February 1, 1992
---------------------------------	--

Noted

6. LEGAL MEETINGS AND ENTERTAINMENT

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

October 8, 1992	Osgoode Society Convocation Hall
October 15, 1992	Class of '47 Convocation Hall
October 22, 1992	Lawyers Club Convocation Hall

23rd October, 1992

October 23, 1992	Class of '57 Barristers Lounge
October 24, 1992	Class of '57 Convocation Hall
October 29, 1992	City of Toronto Barristers Lounge
October 29, 1992	Queens Law School Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"K. Howie"
Chair

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

- B-Item 1 - Memorandum from Mr. David Crack to the Chair and Members of the Finance Committee dated October 7, 1992 re: Financial Statement Highlights - September 30th, 1992. (Pages 7 - 12)
- B-Item 5 - Letter from Mr. Steven A. Kennett, Research Associate, Canadian Institute of Resources Law to Mr. Richard F. Tinsley dated September 18, 1992 re: Conference on the theme of Law and Process in Environmental Management. (Pages 13 - 15)

Mr. Wardlaw spoke to Item B-6&7 re: Suspension of Members. The date for the suspension of those members who had not paid their Errors and Omissions Insurance Levy or filed for exemption was changed from November 1st to November 2nd, 1992.

THE REPORT AS AMENDED WAS ADOPTED

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

It was moved by James Wardlaw, seconded by Abraham Feinstein THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from October 23rd, 1992 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND: FAILURE TO PAY ERRORS AND OMISSIONS INSURANCE LEVY

It was moved by James Wardlaw, seconded by Abraham Feinstein THAT the rights and privileges of each member who has neither paid the Errors and Omissions Insurance levy which was due on July 1st, 1992 nor filed an approved application for exemption from coverage and whose name appears on the attached list, be suspended from November 2nd, 1992 for one year and from year to year thereafter or until an application for exemption has been approved or the necessary levy has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

.....

MOTION

It was moved by Paul Copeland, seconded by Susan Elliott THAT the Law Society of Upper Canada endorse the 1992 White Ribbon Campaign, "Men Working to End Men's Violence Against Women," and that it sponsor an advertisement in the Ontario Reports related to the campaign.

Carried

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FRENCH LANGUAGE SERVICES COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of October, 1992 at 11:30 a.m. The following members attended the meeting: Benchers representation: Ms. P.J. Peters (Chair), Ms. J.K. Palmer (Vice-Chair), Mr. M.G. Hickey. Staff representation: Ms. H. Harris, Mr. A. Treleaven and Ms. D. Paquet (Secretary).

A.
POLICY

1. Discipline Hearings in French

The Chair reported that the recommendations made by the Sub-committee on Discipline Hearings in French were approved by Convocation to allow non-benchers lawyers who are fluent in French to sit on Discipline Panels at the request of a francophone solicitor if French-speaking benchers are not available. These recommendations obviously will require legislative change.

B.
ADMINISTRATION

1. French Content of Ontario Reports

Since the Proceedings of Convocation will no longer be published in the buff pages of the Ontario Reports, the Benchers' Bulletin, Discipline Digest and other such information bulletins will be made available in French to the profession.

Your Committee Vice Chair, Mr. R.C. Topp, will report back to your Committee on other French language prerogatives pertaining to the Ontario Reports such as Law Society notices and announcements.

C.
INFORMATION

1. French Language Services Program - Priorities

At the Treasurer's request, your Committee has identified the following priorities to be addressed in this fiscal year: bilingual staffing requirements, the translation of official Law Society publications, the updating of mailing lists and preference of language status, mailings in French to the profession and French language Continuing Legal Education programs.

With respect to bilingual staffing requirements and at your Committee's request, the first quarterly status report on designated bilingual positions was submitted on September 30, 1992 by the Human Resources Department for review.

The meeting was adjourned at 12:40 p.m.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"P. Peters"
Chair

AUX CONSEILLERS ET CONSEILLÈRES DU BARREAU DU HAUT-CANADA

RÉUNIS EN CONSEIL

LE COMITÉ DES SERVICES EN FRANÇAIS a l'honneur de faire son rapport.

Votre Comité s'est réuni le jeudi 8 octobre 1992 à 11 h 30. Étaient présents, en qualité de conseillers et conseillères, M^{me} P. J. Peters (présidente), M^{me} J.K. Palmer (vice-présidente) et M. M.G. Hickey et, en qualité de membres du personnel, M^{me} H. Harris, M. A. Treleaven et M^{me} D. Paquet (secrétaire).

A.
POLITIQUE

1. Audiences disciplinaires en français

La présidente a annoncé que le Conseil avait approuvé les recommandations du Sous-comité sur la tenue d'audiences disciplinaires en français afin de permettre à des juristes bilingues qui ne sont pas membres du Conseil de faire partie, en l'absence de membres du Conseil bilingues et à la demande de procureurs ou procureures francophones, des jurys de discipline. La loi devra être modifiée en conséquence.

B.
ADMINISTRATION

1. Section française des «Ontario Reports»

Comme les délibérations du Conseil ne seront plus publiées dans les pages jaunes des recueils de jurisprudence «Ontario reports», divers bulletins d'information, y compris celui des membres du Conseil et de la discipline, seront disponibles en français.

Le vice-président de votre Comité, M. R.C. Topp, présentera son rapport à votre Comité sur les autres communications en français dans les recueils de jurisprudence, tels les avis et annonces du Barreau.

C.
INFORMATION

1. Priorités du programme des services en français

Votre Comité a établi, à la demande du trésorier, les priorités suivantes pour le présent exercice : la dotation en personnel bilingue, la traduction des documents officiels du Barreau, la mise à jour des listes de diffusion, le choix de la langue de correspondance, l'envoi des documents en français aux juristes et les programmes de formation permanente en français.

Comme votre Comité en avait fait la demande, le Service des ressources humaines a soumis, le 30 septembre 1992, son premier rapport trimestriel sur les postes désignés bilingues.

La séance a été levée à 12 h 40.

FAIT le 23 octobre 1992.

La présidente,

THE REPORT WAS ADOPTED

INSURANCE COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th day of October, 1992 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Bragagnolo, Hickey, Feinstein, Epstein, Cass, Wardlaw, Somerville and Ms. Elliott.

Also in attendance was Mr. O'Toole.

ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director's monthly report is attached as Appendix "A".

2. LPIC: 1993 REINSURANCE RENEWAL

The Chair presented a status report on the reinsurance renewal negotiations with Lloyds Of London advising that communications are continuing with a view to finalizing the renewal terms in the near future.

3. INCORPORATION OF LAW PRACTICES

The report of the Special Committee on Incorporation of Law Practices notes two situations having insurance considerations. Under the Law Society rules, members, who are exempt from the E & O levy, may hold shares in an active law corporation or act as counsel or solicitor to the corporation without affecting the member's entitlement to an exemption. Your Committee supports the Director's view that members holding shares or who act as counsel or solicitor to a law corporation should not be entitled to an exemption from the E & O levy, and recommends amending the Rules accordingly.

4. E & O DEPARTMENT STAFFING REQUIREMENTS

As a result of the trend towards an increased frequency in professional liability claims against lawyers, the per examiner file load continues to be unacceptably high. Your Committee supports the Director's request to hire two additional examiners, and, as required, two additional support staff.

Because the E & O Department staffing requirement is a function of the frequency of claims against lawyers, and to permit a timely response to possible future sustained increases in claim frequency, your Committee recommends that the Director be granted authority to hire additional staff should the average per examiner claim count exceed 350 files sufficiently to result in a case load for a new examiner of at least 350 files.

5. E & O DEPARTMENT BUDGET

Your Committee has unanimously approved the E & O Department 1993 Budget which was tabled at the meeting.

23rd October, 1992

6. OUTSTANDING ITEMS

a) Impact of "Rectification" on Members' Levies and Deductibles

Rectification of a member's error or omission is an integral part of the insurer's response to claims. Its purpose is to mitigate damages arising out of a member's acts. In cases where rectification has succeeded, the member's levy and deductible are affected in the same manner as when a claim is paid. That is, payment of the member's individual deductible is required in addition to the member's levy and deductible rating categories being affected. A query regarding this policy has been raised. Because rectification serves to avoid a claim for damages that would otherwise occur, your Committee supports the Director's view that the current policy should not be amended.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"C. Campbell"
Chair

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

Item 1 - Director's Monthly Report. (Appendix "A")

THE REPORT WAS ADOPTED

INVESTMENT COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of October, 1992 at two-thirty in the afternoon, the following members being present: Messrs. Wardlaw (Chair), Bragagnolo, Feinstein and Furlong. Staff members present were David Crack and David Carey. Also present were Messrs. Rowland Bell and John Seagram of Martin, Lucas & Seagram Limited.

R. _____
ADMINISTRATION

1. Investment Report

The Deputy Director of Finance presented to the Committee an investment report summary for the various Law Society Funds for the month ended September 30, 1992 (Schedule A).

Approved

23rd October, 1992

2. Other Matters

Mr. Rowland Bell attended the meeting to discuss the current interest rates and their trends and investment strategies. He recommended that the Law Society invest short term funds as follows:

ERRORS AND OMISSIONS INVESTMENT FUNDS

<u>Purchase Recommendations:</u>	<u>Approx. Price</u>	<u>Yield</u>
\$1,000,000 Canada 6-1/4% Feb. 1/98	95.90	7.19%
1,000,000 Ontario Hydro 8-5/8% Feb. 6/02	100.80	8.50%
500,000 Canada 7-1/4% June 1/03	96.75	7.70%

LAWYERS' FUND FOR CLIENT COMPENSATION

<u>Purchase Recommendations:</u>	<u>Approx. Price</u>	<u>Yield</u>
\$ 500,000 Canada 6-1/4% Feb. 1/98	95.90	7.19%
500,000 Ontario Hydro 8-5/8% Feb. 6/02	100.80	8.50%

Approved

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"J. Wardlaw"
Chair

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

B-Item 1 - Investment Report Summary for various Law Society Funds for month
ending September 30, 1992. (Schedule A)

THE REPORT WAS ADOPTED

LAWYERS FUND FOR CLIENTS COMPENSATION COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th October, 1992, at 11:45 a.m. the following members being present:

C. Ruby (Chair), N. Finkelstein (Vice-Chair), V. Krishna (Vice-Chair), L. Brennan, S. Lerner and S. Thom; P. Bell and H. Werry also attended.

A.
POLICY

No items

B.
ADMINISTRATION

1. PUBLICITY FOR THE COMPENSATION FUND

A Report from the Communications Department was considered and discussed by the Committee.

2. APPOINTMENT OF A LAY BENCHER AND
TWO NON-BENCHER MEMBERS TO THE COMMITTEE

The Chair indicated that for many years there was a lay bencher on the Committee to represent the public. The Committee decided to request that the Treasurer take steps to see that one of the lay benchers and two non-bencher members are placed on this Committee.

3. FINANCIAL DATA OF THE COMPENSATION FUND

The Committee began a consideration of ways to better communicate in its Reports to Convocation the complex financial data that reflects its work. The discussion will continue next meeting day.

4. COMPENSATION HEARINGS HEARD BY REFEREE
PRIOR TO DISCIPLINE PROCEEDINGS

The Secretary of the Society has requested that staff counsel consult with Senior Counsel Discipline in cases where it is proposed that the Referee hearing proceed in advance of the discipline hearing. The purpose is to determine in which cases, if any, there are objections to this manner of proceeding. Such cases will then be placed before the Chairs of the Discipline Policy Section and Lawyers Fund for Client Compensation Committees to determine the appropriate course of action.

IT IS RECOMMENDED that the above procedure be implemented with the condition that in every case where the hearing of a claim is delayed upon agreement by the Chairs of the Discipline Policy Section and Lawyers Fund for Client Compensation Committees, a submission will be made by counsel for the Law Society that the claimant should be paid interest at the rate set out in the *Courts of Justice Act* for the period of delay caused by the Law Society.

5. GENERAL GUIDELINES

The Committee began a discussion of the use of clear language in the General Guidelines that are made available to claimants. The discussion will continue at subsequent Committee meetings.

23rd October, 1992

C.
INFORMATION

1. Copies of the Financial Summary, and the Activity Report for August 1992 are attached. (Pgs. C1 - C3)
2. Accounts approved by Assistant Secretaries in September amounted to \$22,270.65.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"C. Ruby"
Chair

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

B-Item 1 - Financial Summary and Activity Report for August 1992.
(Marked C1 - C3)

THE REPORT WAS ADOPTED

LEGAL AID COMMITTEE

Ms. Kiteley spoke to Item A-1 re: Regulation pursuant to the Legal Aid Act and advised that the changes to the Regulation would come into effect on November 1st, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of October, 1992 at one o'clock in the afternoon, the following members being present: Frances P. Kiteley, Chair, Messrs. Ally, Brennan, Bond, Ms. Campbell, Mr. Carter, Ms. Cohen, Ms. Curtis, Messrs. Copeland, Durno, Ms. Kehoe, Messrs. Koenig, Lalande, Panico and Petiquan.

Also present, Allan Rock Ex Officio Member of the Legal Aid Committee and Treasurer of the Law Society of Upper Canada, Don Crosbie, Under-Treasurer of the Law Society of Upper Canada and Michael Neville, representing the Ottawa Defence Lawyers Association.

A.
POLICY

1. REGULATION PURSUANT TO THE LEGAL AID ACT

The Legal Aid Committee considered the draft Regulation which had been prepared by members of the Ministry of the Attorney General to implement many of the changes approved by the Legal Aid Committee arising out of the reports of the Criminal Tariff Sub-Committee, the Family Law Sub-Committee and the Immigration Tariff Sub-Committee. The Legal Aid Committee debated the contents of the Regulation at some length. The following motions were put forward:

MOTION #1

It was moved by Mr. Bond and seconded by Mr. Carter that the Legal Aid Committee adopt the draft regulation and recommend to Convocation that the draft regulation be approved with the following amendment to Columns 1 and 2:

- a) For those with four years criminal law experience the increased deduction starts at \$200,000.
- b) For those with ten years criminal law experience, the increased deduction starts at \$225,000.

MOTION #2

It was moved by Mr. Copeland and seconded by Ms. Curtis that Section 97 of the Regulation be amended by deferring Sub-Sections (5) and (6) until the Bar was consulted.

A vote was held, the result of which was:

MOTION #1

In Favour: 11
Opposed: 2
Abstention: 1

MOTION #2

In Favour: 3
Opposed: 11

MOTION #1 CARRIED.

The Regulation is attached hereto as SCHEDULE (A).

2. REPORT OF THE STUDENT LEGAL AID
SOCIETIES SUB-COMMITTEE

Due to the lengthy debate with respect to the changes in the Regulation pertaining to the criminal tariff, the Report of the Student Legal Aid Societies Sub-Committee was deferred to November.

23rd October, 1992

B.
ADMINISTRATION

1.(a) REPORT OF THE PROVINCIAL AUDITOR
FOR THE YEAR ENDED MARCH 31, 1992

The Report of the Provincial Auditor with respect to the Ontario Legal Aid Plan for the year ended March 31, 1992 is attached hereto and marked as SCHEDULE (B).

(b) REPORT OF THE DEPUTY DIRECTOR, FINANCE
FOR THE FIVE MONTHS ENDED AUGUST 31, 1992

The forecasted shortfall in government funding for Legal Aid, based on five months of operation to August 31, 1992 is \$15,992,100.

In the last week, the bank prime rate increased by 2% and if interest rates stay at these levels for the balance of the year, the Law Foundation allocation to the Plan will increase by \$1,000,000.

The Foundation has offered to pay an additional \$8,500,000 from its revenues to the Plan during the current fiscal year. The shortfall in funding then is currently forecasted at \$6,492,100.

The Report of the Deputy Director, Finance is attached hereto and marked as SCHEDULE (C).

(c) REPORT ON THE PAYMENT OF SOLICITORS
ACCOUNTS FOR THE MONTH OF SEPTEMBER, 1992

The Report on the Payment of Solicitors Accounts for the month of September, 1992 is attached hereto and marked as SCHEDULE (D).

(d) REPORT ON THE STATUS OF REVIEWS
FOR THE MONTH OF SEPTEMBER, 1992

The Report on the Status of Reviews in the Legal Accounts Department for the month of September, 1992 is attached hereto and marked as SCHEDULE (E).

(e) AREA COMMITTEES - RESIGNATION

Wellington
John Valeriotte

ALL OF WHICH is respectfully submitted

"Frances P. Kiteley"
Chair

October 8, 1992

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

- | | | |
|---------------|---|-------------------------|
| A-Item 1 - | Copy of the Regulation made by the Law Society of Upper Canada under the Legal Aid Act. | (Schedule A, pages (5)) |
| B-Item 1(a) - | Report of the Provincial Auditor for year ended March 31, 1992. | (Schedule B, pages (8)) |

- B-Item 1(b) - Report of the Deputy Director, Finance for the month of September, 1992. (Schedule C, pages (3))
- B-Item 1(c) - Report on Payment of Solicitors Accounts for the month of September 1992. (Schedule D, pages (2))
- B-Item 1(d) - Report on the Status of Reviews in the Legal Accounts Department. (Schedule E)

THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Thursday, the 8th of October, 1992, at 10:30 a.m.

The following members were in attendance: Donald Lamont (Vice-chair, in the Chair), Philip Epstein (Vice-chair), Thomas Bastedo, Lloyd Brennan, Stephen Goudge, Vern Krishna, Colin McKinnon, Ross Murray, Louis Radomsky, Marc Somerville, Roger Yachetti. Non-member Bencher in attendance was: Joan Lax. Representing the law schools was: Dean Jeffrey Berryman. Staff in attendance were: Marilyn Bode, Brenda Duncan, Mimi Hart, Alexandra Rookes, Alan Treleaven.

A.
POLICY

A.1 REPORT OF THE PLACEMENT POLICY GROUP OF THE ARTICLING SUBCOMMITTEE

A.1.1 The Report of the Placement Policy Group of the Articling Subcommittee was distributed with the Meeting Agenda Supplement to the September 10, 1992 Legal Education Committee Meeting Agenda. The Report, including its Recommendations, is attached. (pages 1 - 37)

A.1.2 The Report was discussed briefly by the Legal Education Committee at the September 10, 1992 meeting, but further discussion was deferred until the October 8, 1992 meeting.

A.1.3 The Chair of the Articling Subcommittee, Marc Somerville, presented the recommendations of the Subcommittee relating to 1992 articling placements. After some discussion, the Committee approved Recommendations (see A.1.4. below) for the 1992-3 articling year. There was also an informal consensus that the Chair of the Legal Education Committee should initiate an on-going examination of articling placement to deal with possible changes to the demand for articling positions and numbers of articling positions available in future years.

A.1.4 Recommendation: The Legal Education Committee recommends the following for the 1992-93 articling year:

1. The Law Society not impose a professional obligation to hire articling students, but that the profession be reminded of its moral obligation to assist in the education of articling students.

2. The Law Society not guarantee to arrange articling positions for students, but continue to use its resources to assist students to secure articling positions.

3. A special subcommittee be formed to review the effectiveness of current procedures governing recruitment of articling and summer students.

4. The Articling Subcommittee continue to monitor the articling placement situation through the Law Society's Placement Office (including collecting data early in 1993 which will identify the number of law students without articles) and that this data be reported to the Legal Education Committee with any preliminary recommendations prior to the commencement of Phase One, 1993.

5. The Law Society through its existing resources make efforts to assist students with "special needs" to compete fairly in the articling recruitment process.

6. The Law Society ensure its involvement in any situation in which the articling commitment is withdrawn or termination of the articling relationship is contemplated by imposing a requirement that such situations be reported to the Law Society. The prime objective of the Law Society in these cases will be to repair the relationship, if possible, and to ensure that each party meets its obligations.

7. With the exception of activities undertaken pursuant to (5) above, the Law Society provide its placement services equally to all students and not give precedence to any category of student.

A.2. APPROVAL OF PART-TIME LL.B. PROGRAMS: UNIVERSITY OF ALBERTA AND UNIVERSITY OF BRITISH COLUMBIA

A.2.1 The University of Alberta and the University of British Columbia request approval of part-time LL.B. programs for purpose of admission of their graduates to the Bar Admission Course. The Legal Education Committee is responsible for approval of courses and universities for the purpose of student admission to the Bar Admission Course, pursuant to Rule 35 (2) (d) of the Rules made under The Law Society Act.

A.2.2 Pursuant to an agreement between The Law Society of Upper Canada and the Federation of Law Societies of Canada, the Joint National Committee on Legal Education has reviewed the approval applications from the University of Alberta and the University of British Columbia. The Joint National Committee has approved both applications. The basis of the approval is contained in a memorandum of September 10, 1992 from David Cruickshank on behalf of the Joint National Committee on Legal Education to the law society secretary in each Canadian common law jurisdiction. (pages 38 - 39) (The attachment referred to on the second page of the memorandum is not included with this Report.)

A.2.3 Recommendation: The Legal Education Committee recommends that the part-time LL.B. programs at the University of Alberta and the University of British Columbia be approved for the purpose of admission of graduates to the Bar Admission Course.

B.
ADMINISTRATION

No items this month.

C.
INFORMATION

C.1 ARTICLING SUBCOMMITTEE

C.1.1 The Articling Subcommittee met on Thursday, September 24, 1992. In attendance were Marc Somerville (Chair), Denise Bellamy, Maurice Cullity, Stephen Goudge, Janne Burton, Jay Rudolph and Victoria Colby. Staff members attending were Marilyn Bode, Barbara Dickie and Mimi Hart.

C.1.2 The Subcommittee considered seven abridgment petitions. Six of the petitions were granted. The seventh petition was denied as the individual's experience was on a part-time or freelance basis pre-law or during law school. Section 14.1.4 of the Proposals for Articling Reform provides that part-time experience prior to completion of the LL.B. requirements cannot be counted toward an application for an abridgment based on experience other than in articling or practice.

C.1.3 The Subcommittee ratified 80 applications to serve as articling principal. All applicants received notification of approval by the Articling Director during the summer. The Subcommittee gave conditional approval to a further approximately 51 applications from prospective articling principals for the 1992/93 articling year. To date, approximately 1133 members of the profession have applied. The Subcommittee denied approval to three principals based on their significant negative history with the Law Society. One member's application has been deferred pending the outcome of two pending discipline matters. Two applications to serve as articling principal for the 1993/94 articling year considered at the Subcommittee's meeting in June were reconsidered. The Subcommittee granted approval subject to the submission of regular reports to the Articling Director.

C.1.4 The balance of the Subcommittee's lengthy agenda was not reached as the bench members of the Subcommittee were required at Convocation at 9:00 a.m. Another meeting of the Subcommittee will be set shortly.

C.2 ARTICLING AND SUMMER STUDENT RECRUITMENT

C.2.1 The Chair of the Legal Education Committee has invited Philip Epstein to form a special subcommittee to review the procedures governing recruitment of articling and summer students. Mr. Epstein and his subcommittee will meet with members of staff and interested individuals to review the procedures and to determine what changes might be recommended to the Legal Education Committee.

C.3 BAR ADMISSION COURSE STUDENT REQUEST FOR EARLY CALL TO THE BAR

C.3.1 A Bar Admission Course student has written to the Director and to the Registrar, Deborah Brown, requesting permission to be called to the Bar during the week of January 11 to 14, 1993 rather than at the Special Convocation for Call to the Bar of the graduates of the current Bar Admission Course, scheduled in Toronto on February 9, 1993.

C.3.2 The Director is recommending to the Secretary and the Admissions Committee that the request be denied.

C.4 CONTINUING LEGAL EDUCATION REPORT ON COURSES

C.4.1 The Report is attached. (pages 40 - 41)

C.5 CONTINUING LEGAL EDUCATION: OTTAWA

C.5.1 The Bankruptcy and Insolvency Act program was held in Ottawa on September 18, 1992. Seventy-five registrants attended this half-day program, and evaluations were good.

C.5.2 Holly Harris introduced Stanley Kershman, who welcomed registrants and introduced his co-chair Frank Bennett and the other speakers. Speakers included Peter Genzel, David Stewart, Frank Bennett, Percy Ostroff, Stanley Kershman and John Hollander. Topics included commercial reorganization, consumer reorganizations and bankruptcy, secured creditors and receivers, crown priorities, and protection of unpaid suppliers. The program was videotaped. Materials for the registrants included papers on these topics, the legislation and a summary of the amendments.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"P. Lamek"
Chair

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

- A-Item A.1. - Report of the Placement Policy Group of the Articling Subcommittee. (Pages 1 - 37)
- A-Item A.2. - Memorandum from Mr. David Cruickshank to the Law Society Secretaries dated September 10, 1992 re: Approval of Part-time LL.B. Programs - University of British Columbia and University of Alberta. (Pages 38 - 39)
- C-Item C.4. - Report on Courses - Continuing Legal Education. (Pages 40 - 41)

THE REPORT WAS ADOPTED

LEGISLATION AND RULES COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th October, 1992, at 10:30 a.m. the following members being present:

M. Cullity (Chair), J. Palmer (Vice-Chair), A. Lawrence, S. Lerner and S. Thom; D. Crosbie, P. Bell and A. Brockett also attended.

A.
POLICY

No items

B.
ADMINISTRATION

1. INCORPORATION OF LAW PRACTICES -
AMENDMENTS TO THE RULES UNDER THE LAW SOCIETY ACT -
PRESCRIBING FORMS

Convocation on May 29th, 1992 adopted a Report of the Special Committee on Incorporation of Law Practices. As a result amendments to the Rules under the Law Society Act should be made and the necessary forms should be prescribed by the Rules.

IT IS RECOMMENDED that the following amendments to the Rules under the Law Society Act be approved:-

- (1) That under the power granted by paragraph 10 of s. 62(1) of the *Law Society Act*, Convocation add a new subrule numbered (5) to Rule 34 as follows:

(5) The Finance and Administration Committee shall consider and report upon applications of law corporations for surrender of their certificates of authorization.

- (2) That under the power granted by paragraph 10 of s. 62(1) of the *Law Society Act*, Convocation amend Rule 37 to read as follows:

37. The Committee is responsible to Convocation for all matters relating to the conduct and discipline of members, student-members and law corporations and it may make such arrangements and take such steps as it considers advisable to carry out its responsibilities.

- (3) That under the power granted by paragraph 10 of s. 62(1) of the *Law Society Act*, Convocation amend Subrule (3) of Rule 37A to read as follows:

(3) A Complaints Commissioner shall, if requested by the complainant, review the disposition by the Society of a complaint against a member or a law corporation, other than a complaint which is the subject of a formal disciplinary complaint filed with the Secretary pursuant to section 33(1) of the Law Society Act.

- (4) On the day the Part II amendments of the *Law Society Act* are proclaimed in force amend Rule 50A to read as follows:

50A Where an investigation of a member or members, or of a law corporation, required by the Chair or Vice-Chair, pursuant to section 18 of Regulation 573, takes more than ten hours to complete, the Chair or a Vice-Chair, may require that a member or members, or a law corporation, pay the costs of the investigation for the period in excess of ten hours, at \$50.00 per hour up to a maximum of \$2,500.00.

- (5) That under the power granted by paragraph 27 of s. 62(1) of the *Law Society Act*, Convocation amend Rule 56 by adding paragraph (4) as follows:

56.(4) The forms in connection with the incorporation of law practices shall be as listed below:

- (a) The Application for a Certificate of Authorization shall be in Form 6 LC.
- (b) The Certificate of Authorization shall be in Form 7 LC.
- (c) The Notice to a Law Corporation respecting Annual Certificate of Compliance shall be in Form 8 LC.
- (d) The Certificate of Compliance shall be in Form 9 LC.
- (e) The Notice of Application for Permission to Surrender a Certificate of Authorization shall be in Form 10 LC.

2. INCORPORATION OF LAW PRACTICES -
FORMS 6LC, 7LC, 8LC, 9LC AND 10LC

Forms 6LC, 7LC, 8LC, 9LC and 10LC referred to in item B 1.(5) above were drafted as a result of the Report of the Special Committee on the Incorporation of Law Practices being adopted by Convocation on May 29th, 1992. These Forms are in addition to the Forms for law corporations that were adopted by Convocation on September 24th, 1992. Copies of the Forms 6LC, 7LC, 8LC, 9LC and 10LC are available upon request from the Secretary's office.

IT IS RECOMMENDED that the Forms 6LC, 7LC, 8LC, 9LC and 10LC be approved.

3. DEPARTMENT BUDGET

The Secretary of the Committee reported on the budget.

23rd October, 1992

C.
INFORMATION

1. AMENDMENTS TO REGULATION 573

The following amendments to Regulation 573 were signed by the Lieutenant Governor and filed on September 21st, 1992:-

Sections 15a and 15b	Mortgage Brokering
Sections 16(2) and 16(3)	Certificate instead of statutory declaration on Forms 2/3
Section 16(2a)	Accountants access re member's files
Sections 12(3), 12(4), 12(5)	Change of name of Finance Committee
Section 22(5a)	Call to bar not within 3 years of Bar Admission Course
Section 22(8), (9) and (10)	Bar Admission Course eligibility
Section 6(2)	Occasional appearance
Section 20(4)	Advertising of specialist qualifications - revoked

2. REVISED REGULATIONS ONTARIO 1990

It was reported that the R.R.O. 1990 have been printed. The target date for these Regulations to be in force is mid-November. The Law Society Regulations 573 and 574 are renumbered as 708 and 709. The R.R.O. are gender neutral and in plain language. The French version of Regulations 573 and 574 is being finalized by Legislative Counsel at Queen's Park.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"M. Cullity"
Chair

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of October, 1992, at 9:00 a.m., the following members being present:

D. Murphy (Chair), R. Bragagnolo, M. Cullity, G. Farquharson, K. Golish, M. Hickey and B. Pepper; G. Howell and P. Bell also attended.

A.
POLICY

No Items

B.
ADMINISTRATION

1. COUNTY LAW LIBRARIES - 1993 BUDGETS

The Chief Librarian requested two documents (projected 1992 Finances and 1993 Budget Estimates) from the 47 County Law Associations. The Chief Librarian reported that several counties have substantially increased the Association fee and several are considering increases. The Committee discussed various ways of increasing revenue to partially offset the projected deficit for 1993 and as a reserve against lower Law Foundation funding for 1994. After discussing the needs of the County Libraries the Committee deferred this matter until the November meeting.

C.
INFORMATION

1. BOOK LIST

The Great Library added 39 new titles to its book collection for September.

2. MEETING WITH REPRESENTATIVES OF
THE MINISTRY OF THE ATTORNEY GENERAL

It was reported that the Society requested a response after the meeting with the representatives of the Ministry of the Attorney General on June 25th, 1992, concerning

- (1) extending free distribution of the Ontario Reports to the 25 General Division Judges who are not now receiving them and having the Attorney General pay the cost;
- (2) the potential duplication of resources in Court Houses between
 - (a) County Libraries and
 - (b) Government Libraries for the two divisions of the judiciary and the Crown Attorneys; and
- (3) Provision of adequate space, facilities and fixtures for county libraries within Court Houses across Ontario.

23rd October, 1992

Since no response has been received the Chief Librarian was instructed to contact the Ministry for its response.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"D. Murphy"
Chair

THE REPORT WAS ADOPTED

PROFESSIONAL CONDUCT COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of October, 1992 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Cullity (Vice-Chair), Finkelstein, Hickey, Rowe (non-bencher member) and Scott.

A.
POLICY

The following item was deferred in September to the October Convocation:

1. FEE SPLITTING - LAWYER QUALIFIED IN ONTARIO
AND FLORIDA - TO PARTICIPATE IN STATE BAR
REFERRAL SERVICE - MUST REMIT PERCENTAGE TO SERVICE

A lawyer in Ontario is also qualified in Florida. As a lawyer in good standing in Florida he is eligible to participate in the Florida State Bar Association's Lawyer Referral Service. In order to participate he must agree to remit to the Lawyer Referral Service 10% of all fees he bills that are greater than \$40.00.

Is this the type of fee splitting contemplated by Rule 9, Commentary 7, the first paragraph of which reads?

Any arrangement whereby lawyers directly or indirectly share, split or divide fees with conveyancers, notaries public, students, clerks or other persons who bring or refer business to the lawyer's office, is improper and constitutes professional misconduct. It is equally improper for a lawyer to give any financial or other reward to such persons for referring business.

The Committee was of the opinion that Commentary 7 did not apply to this situation. It noted that lawyer participation in lawyer referral schemes is in the public interest and should be encouraged.

23rd October, 1992

The Committee asks Convocation to adopt this opinion.

2. PRIORITIES AND OBJECTIVES FOR THE
PROFESSIONAL CONDUCT COMMITTEE 1992-1993

One of the Committee's priorities is to begin an examination of our Rules of Professional Conduct with a view to determining how they could be made to be more useful to members of the profession. This would obviously entail a revision of many of the existing rules. Alberta and British Columbia are now concluding such an exercise.

The Chair, in consultation with the members of the Committee, will produce a specific proposal to be presented to either the October or November Convocation.

Given the importance of such an undertaking it was thought advisable to keep the bench informed by reporting this as the principal policy issue.

C.
INFORMATION

1. UPDATE ON FEDERATION OF LAW SOCIETIES
COMMITTEE ON MARTIN V. GRAY (S.C.C.
CASE ON CONFLICTS OF INTEREST)

The Federation's Committee held its most recent meeting at the Law Society's offices on Monday, October 5th. The next meeting will be held on November 2nd. A further update will be contained in the next report to Convocation.

2. INCORPORATION OF LAW PRACTICES -
THE NEED TO AMEND THE RULES OF
PROFESSIONAL CONDUCT TO REFLECT THIS

The Committee will be reporting to Convocation on the possible need to amend the Rules of Professional Conduct in November.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1992

"M. Somerville"
Chair

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of October, at 11:30 a.m., the following members being present: C. McKinnon (Chair), R. Murray (Vice Chair), M. Weaver (Vice Chair), D. Murphy, M. Trofimenko.

Also present: M. Devlin, S. Kerr, G. MacKenzie, S. McCaffrey, J. Poworoznyk, P. Rogerson

A. _____
POLICY

A.1. REFERRALS FROM THE PRACTICE REVIEW PROGRAMME TO DISCIPLINE

A.1.1 History

A.1.1.1. The Special Committee on Competence, in its Report to Convocation in April, 1986, identified the enforcement of standards among members in practice as "a central aspect of the Society's responsibility to protect the public and ensure the availability of uniformly competent legal services". The Special Committee pointed out the difficulties that arose in discipline hearings where the complaint involved not moral turpitude but rather an inability to provide legal service effectively, since the discipline process did not appear to be the appropriate mechanism by which to fashion a remedy that would "both protect the public and provide a way for the solicitor to overcome the problems in his or her ability to practise". The traditional discipline sanctions (reprimand, suspension and disbarment) were characterized as "blunt instruments which are rarely appropriate in and of themselves in dealing with" incompetent members. It was therefore determined that a new Committee, and a new mechanism, should be established for dealing with lawyers falling into this category, as a result of which the Professional Standards Committee and the Practice Review Programme (PRP) were constituted.

The Special Committee was of the view, as has indeed proven to be the case, that members likely to benefit from the PRP could readily be identified as a result of recurrent complaints received about a member, multiple errors and omissions claims by a member, and information gathered and impressions formed by audit staff in the course of inspections of members' offices.

A.1.2. Discipline Action Anticipated

Although the PRP was intended as a remedial alternative to the discipline process, the Report of the Special Committee recognized that, in some instances, referrals to discipline would be appropriate. Referrals could arise where:

- a) members refuse to co-operate in the Society's efforts to assess their practices;
- b) members breach their undertakings to the Professional Standards Committee to implement remedial steps;
- c) members appear, as a result of the practice review, to have been guilty of serious misconduct instead of or in addition to incompetence.

It is the policy of the Professional Standards Committee to refer to Senior Counsel, Discipline, cases which come within the above categories, for review and consideration of possible disciplinary action.

A.1.3. Rule 2

Rule 2 of the Rules of Professional Conduct requires members to "be competent to perform any legal services undertaken" and to "serve the client in a conscientious, diligent and efficient manner"; examples of unsatisfactory professional practice are set out in commentary 8 of Rule 2. Members have been prosecuted for professional misconduct in failing to serve clients in a conscientious and diligent fashion, as particularized in the complaint, but an isolated breach of Rule 2 does not necessarily constitute professional misconduct.

A.1.4. Current Procedures

When a member is referred to the PRP, staff in the Professional Standards Department prepare a "profile" of the member, setting out complaints, claims, audit history and discipline history (if any) from 1980. Typically, a member has accumulated a significant number of complaints and/or errors and omissions claims. Many of the complaints or claims may have been closed by the time of the referral, but may indicate a pattern of conduct giving rise to competency concerns.

The Complaints Department deals with each complaint on an individual basis, and Complaints Department staff may conclude (appropriately) that there are no reasonable and probable grounds for disciplinary action on the basis of an individual complaint, as a result of which that Complaints file will be closed. Consequently, if a member declines to participate in the PRP, or otherwise falls within one of the categories outlined above, and the member's file is referred to discipline, any decision to institute disciplinary proceedings requires a significant expenditure of staff time in order to establish grounds for and evidence of the complaint. The mere fact that a number of complaints have been received is not in and of itself sufficient to establish professional misconduct or a breach of Rule 2.

The evidentiary problems encountered include the disappearance or loss of interest of complainants; the number of members of the Law Society's staff who are involved in investigating the various complaints; changes in the Society's staff over time; and the fact that virtually all of the complaints files have been closed after informing the solicitor that the Society has concluded that disciplinary action is not warranted. As a result, only a small fraction of what are individually minor complaints can be proven. Nonetheless, a significant commitment of staff time is required in investigating and preparing for a Rule 2 prosecution of this nature.

Hearings arising in such cases by their very nature must be lengthy, and extend over a period of many months, due to the constraints on Benchers' schedules, who already devote significant time to Law Society matters. Because these prosecutions deal with misconduct which does not involve dishonesty, traditionally the penalty has been a reprimand, either in Committee or in Convocation. This penalty seems disproportionate to the expenditure of Benchers and staff resources, and has no direct impact on the competence concerns which prompted the disciplinary action.

Clearly, continuing incompetence that is apparently wilful should merit an appropriate response in the discipline process, when the member fails to take advantage of the remedial alternative offered by the PRP.

A.1.5. Recommendations

The Committee therefore recommends that the following procedure be implemented in cases where, after authorization has been granted, a member refuses to participate or to continue participation in the PRP, or is unco-operative in responding to PRP recommendations:

- A.1.5.1. Based on the information available, Standards staff will assess whether a particular matter should appropriately be referred for disciplinary action, and so recommend to the Committee.
- A.1.5.2. If the Committee decides disciplinary action should be sought, that decision will be communicated to Senior Counsel, Discipline.
- A.1.5.3. Appropriate Law Society staff will obtain evidence and prepare the case for disciplinary action. Except in unusual cases, investigation will be limited to complaints received in the 2 to 3 years preceding the referral to discipline, in order to avoid allegations of delay and the evidentiary difficulties outlined above.
- A.1.5.4. Authorization of a discipline complaint will be sought.
- A.1.5.5. If authorization is granted, the member will be so notified, and will be provided with the option either of undertaking to participate in and co-operate with the PRP, as a result of which the disciplinary proceeding will be adjourned *sine die*, or of undergoing an open, discipline hearing. If the member satisfactorily completes the PRP, the disciplinary action will be discontinued. In the event that the member's participation in the PRP is not brought to a satisfactory conclusion, the disciplinary proceeding will resume. The member will be so informed when given this opportunity to participate.

It is anticipated that many members will avail themselves of the opportunity to participate in the PRP in these circumstances, thus allaying the potential impact of "competence" discipline hearings on Benchers time. It seems reasonable to conclude that those members who are unwilling to take advantage of this opportunity are likely to be those who are most appropriately in the discipline process.

Although the member's attitude towards the PRP may be of concern when participation occurs in these circumstances, nonetheless, in order to seek to address the competence difficulties, it is preferable to at least attempt to instigate the programme, and the programme, once initiated, may overcome any attitude problem on the part of the member (as has already been found to be the case in many instances). Where a member agrees to participate, but discipline proceedings are resumed subsequently, information obtained as a result of the involvement of the Professional Standards Department would not be confidential, but would be available to the discipline process and may be of assistance in determining an appropriate disciplinary response to the misconduct, if established.

This procedure would not be applicable in those cases where a member is participating in the PRP as a result of an undertaking given in the discipline process, since there are other mechanisms available in such instances.

A.2. REVIEW PANELS REVISITED

A.2.1. Initial Process

When a member agrees to participate in the Practice Review Programme, in most circumstances Standards staff retain the services of a practising member of the bar to act as reviewer. The reviewer typically spends a day meeting with the member and his or her staff, and prepares a report setting out various recommendations. That report is forwarded to the member, and the member's written response elicited. In addition, staff may make additional suggestions at this time.

The member is allowed a period of time in which to implement the recommendations made, after which typically staff will re-attend to assess the member's progress, make any other appropriate recommendations, and provide such assistance as may be required. A further report is written by staff, and the member's written response requested. It is after this point that the Review Panel is convened.

A.2.2. Review Panel Involvement

At present, the Review Panel is made up of 2 or 3 Benchers, at least one of whom is a member of the Professional Standards Committee, and at least one of whom has experience in an area of practice similar to the member's. Staff attend in order to provide administrative assistance and information to the Panel, and in some cases the reviewer may be asked to attend. The member is also invited to attend, but the Panel will proceed in his or her absence.

The Review Panel has at least 3 functions:

- 1) to reinforce with the member the necessity for implementing changes to his or her practice;
- 2) to provide the member with a standard of comparison for competent practice procedures, in addition to that provided by the reviewer;
- 3) to propose a remedial programme, highlighting the concerns the Panel may have regarding the member's practice. This is the central function of the Review Panel.

After the Review Panel has concluded its discussion with the member, the member is asked to undertake to implement the remedial programme prescribed. Staff prepare a report setting out that programme, and forward two copies of same to the member, one of which is to be executed and returned, if consented to. Thereafter, staff meet with the member at regular intervals, in order to monitor compliance with and progress in implementing the programme, and to assist the member in doing so. Involvement in the Programme extends for between one and two years. In some circumstances, where a member's progress is less than satisfactory, a further Review Panel may be convened (not always constituted by the same Benchers). In the majority of cases, the involvement of Benchers on the Review Panel does not continue beyond the termination of the Panel meeting.

A single Review Panel is usually convened to address no more than two members participating in the Programme. At present, there are over 100 active participants.

A.2.3. Issues

- A.2.3.1. Is it necessary, in every instance, for a participant in the Practice Review Programme to appear before a Review Panel?
- A.2.3.2. If it is not necessary, in what circumstances should a Review Panel be foregone?
- A.2.3.3. By whom should this decision be made?
- A.2.3.4. Should non-Benchers participate on Review Panels?
- A.2.3.5. If so, what screening procedure should be followed in selecting non-Benchers to act in this capacity?

A.2.4. Considerations

- A.2.4.1. Panels Some members become involved in the Practice Review Programme as a result of a relatively small number of complaints or claims, where it appears that the member might benefit from early intervention and thus avoid future practice problems. They, and other participants in the Programme as well, are often extremely responsive to the suggestions made by the reviewer and staff, as an apparent result of which complaints and claims diminish or cease. In such cases, convening a Review Panel adds little to the process, while absorbing a significant amount of Benchers and staff time.

Some members are invited to participate as a result of specific concerns with respect to their books and records; in such cases, the Law Society's Systems Adviser provides remedial assistance, and an external reviewer is unlikely to be used. In most of these cases, given the limited, and specialized, nature of the review, a Review Panel seems unnecessary.

- A.2.4.2. Non-Benchers The policy originally determined by the Committee required three Benchers to participate on review panels. This policy was reconsidered and amended to provide that a review panel could be composed of a single Bencher, because of constraints on Bencher time. The use of non-Benchers could alleviate further the demands being imposed, and a roster of non-Benchers could be established who would hold or develop expertise in this area. The use of non-Bencher panellists would add to the Law Society's efforts in recognizing the ever-increasing diversity and stratification of the legal profession.

As is done in selecting reviewers, a potential non-Bencher panel member would be screened by staff to ensure that he or she was qualified to act in this role. Current reviewers would be an obvious starting-point for developing the roster. In addition, County and District Law Associations would be a source for panel members.

- A.2.4.3. Cost Review panels are scheduled, as much as possible, in the late afternoon or early evening, in order to restrict interference with the Bencher's or the member's practice obligations. Similarly, panels are scheduled for days when Benchers are likely to be at Osgoode for other reasons, such as Convocation or Committee Day.

Members who act as reviewers are compensated on a *per diem* basis, partly in recognition of the time required to properly conduct a review. Benchers who sit on review panels receive no compensation other than reimbursement of their out-of-pocket expenses. Review panels will continue to be scheduled at a time when non-Benchers as well as Benchers will be in the Osgoode area, such as in conjunction with the County and District Law Presidents Plenary Sessions. The reimbursement of a non-Bencher's expenses would be unlikely to exceed \$400.00 per panel. It is not expected that more than 2 panels will be convened per month, at a maximum monthly cost of \$800.00 for non-Benchers. Since this expense would have been incurred by the Benchers sitting on review panels, little or no increase in cost is expected to arise from the participation of non-Benchers.

A.2.5. Recommendations

In light of the foregoing considerations, the Committee recommends that:

- A.2.5.1. A review panel be convened only in necessary cases.
- A.2.5.2. Each participant in the Practice Review Programme be considered on an individual basis, in determining the necessity for convening a review panel.

- A.2.5.3. Rather than attempt to define, and thereby potentially limit, cases where a review panel is not necessary, staff prepare a memorandum setting out the participant's circumstances and other relevant considerations, in cases where a review panel is thought to be unnecessary.
- A.2.5.4. The decision as to whether a review panel be convened rests with the Chair of the Professional Standards Committee, or, in the Chair's absence, with a Vice-Chair, based on the information compiled by staff through the Practice Review Programme.
- A.2.5.5. Non-bencher members in good standing be invited to participate as review panellists.
- A.2.5.6. Staff follow existing procedures for screening for reviewers in order to screen any interested non-Bencher members.
- A.2.5.7. Non-Bencher panellists be compensated only for their out-of-pocket expenses.

B.
ADMINISTRATION

B.1. PRACTICE REVIEW PROGRAMME - FILE CLOSURES

- B.1.1 Three Practice Review files were closed by the Committee based on recommendations from staff. One file was closed because the member withdrew from the Practice Review Programme; a second file was closed because the member was unwilling to participate in the Programme. These files are being referred to Senior Counsel, Discipline pursuant to Committee Policy.
- B.1.2. The third member was authorized for participation as a result of a referral from Complaints Review. After authorization, staff obtained from the Complaints Department a memorandum providing a detailed description of the complaints made against the lawyer, and staff met with the lawyer to discuss her participation in the Programme. The member's complaints history does not indicate any pattern of incompetence or sloppiness on the part of the member. The member conducts a family law practice, with a significant number of Legal Aid files, and is known in the community for taking on difficult cases and difficult clients, for whom representation might not otherwise be available. It therefore appears that the member is not an appropriate candidate for the Programme. The Committee recommended that the member's file be closed and the member's name restored to the Lawyer Referral Service.

C.
INFORMATION

C.1 PROFESSIONAL STANDARDS - DEPARTMENTAL UPDATE

- C.1.1. Since September, an additional 13 members were authorized for participation in the Programme, bringing the total number of open files to 101. Of these, 11 files are in abeyance as a result of members being under suspension or otherwise not practising, or because of on-going discipline proceedings against the member.

- C.1.2. The Errors & Omissions Department is refining its referral process in order to bring to the attention of the Programme those members who have a relatively small, but growing, number of claims. Such members are being identified at the E&O "intake" desk when they have 5 (or more) claims in 1992, so that possible preventative measures can be implemented to avoid future claims. The procedure will also capture members who have a significant E&O history, and will operate in conjunction with the existing procedure whereby members perceived by E&O staff to have practice management problems are referred to the Professional Standards Department.
- C.1.3. The Professional Standards Department brings to the attention of lawyers participating in the Practice Review Programme CLE programs which may be of particular relevance to them, by directly target-mailing participants. The confidentiality of Programme participants is maintained by conducting these mailings out of the Professional Standards Department, rather than through CLE. Programme participants, many of whom have a poor CLE attendance record, are responding favourably to this approach; there are the added benefits of an increase in CLE registrations and an enhancement of the Law Society's public relations image.
- C.1.4. A Review Panel convened in September addressed the practice problems of two members participating in the Practice Review Programme. It is anticipated that the next Review Panel will be scheduled for November, and staff are in the process of preparing for same.
- C.1.5. Many initiatives concerning members' competence have their counterpart in the ICAO. For example, the ICAO conducts a peer review program, and it offers workshops to new practitioners establishing an accounting practice. The exchange of information and ideas is proving beneficial to both organizations, and should assist both in better serving our respective memberships.
- C.2. PRACTICE ADVISORY SERVICE - STATUS REPORT
- C.2.1. A Bar Admission Course student is being employed under the Ontario Work Study Program to develop materials to assist members who are considering the purchase of a law practice. It is expected that the materials will include the extensive use of checklists for the assistance of both vendors and purchasers. Solicitors known to have purchased practices recently will be contacted for their input.
- C.2.2. A member who read in the *Law Times* of the appointment of the Practice Advisor was startled at this use of Law Society funds and sought information about the usage of the Service. A letter was sent outlining the assistance provided through the Service and providing statistical data about the volume of enquiries received.
- C.3. LINK - LAWYERS' ASSISTANCE PROGRAM
- C.3.1. The Link Board met in September to review tenders received from 6 Employee Assistance Program providers, including the current caregiver, Corporate Health Consultants. The Board rejected three of the tenders, and struck a sub-committee to meet with the remaining three tendering companies, again including Corporate Health Consultants, after which the sub-committee will prepare a report for consideration by the Board in determining to whom the contract should be awarded.

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C.4. FAMILY LAW CHECKLIST

Staff met with Fran Kiteley to review the format and content of the checklist. Ms. Kiteley has suggested that a section be added dealing with the Child and Family Services Act. Carole Curtis has provided staff with the name of a member experienced in this area of practice to assist with this undertaking.

ALL OF WHICH is respectfully submitted

DATED this 23th day of October, 1992

"C. McKinnon"
Chair

THE REPORT WAS ADOPTED

RESEARCH AND PLANNING COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of October, 1992, at 8:00 a.m, the following members being present: T. Bastedo (Chair), L. Brennan, M. Cullity, C. Curtis, S. Elliott, J. Herbert, the Hon. A. Lawrence, C. McKinnon, F. Mohideen, M. Somerville.

Also present: A. Brockett, S. Hodgett, E. Spears.

A.
POLICY

A.1. ROLL-CALL VOTES IN CONVOCATION

A.1.1. Recommendation

Your Committee recommends:

- That for an experimental period, commencing immediately and continuing until June 30, 1993, the details of every roll-call vote in Convocation be published by the Law Society.
- That the details of roll-call votes be published at the earliest opportunity after the meeting of Convocation at which the vote occurs.
- That the most suitable publication for details of roll-call votes would be the *Benchers Bulletin*.

A.1.2. Reasons for the recommendation

- A.1.2.1. At the Annual Meeting of the Law Society on November 7, 1990, it was resolved that the Law Society should record and make available to all members the way in which each benchers votes on each motion brought before Convocation.
- A.1.2.2. As a response to this resolution, Convocation adopted, on February 15, 1991, a series of recommendations from the Research and Planning Committee. One of the recommendations was that a transcript of the proceedings of Convocation should be produced. Another of the recommendations was that, for an experimental period, roll-call votes should be conducted on items of significant interest to the profession and on any other motion if so requested by a benchers.
- A.1.2.3. Concerns had been expressed that voting records might not be properly understood unless they were accompanied by a report of the debate preceding each vote. It was therefore part of the experimental scheme adopted by Convocation in February, 1991, that although roll-call votes would be conducted the details would not be published other than as part of the transcript. During the course of 1991-1992, as a further part of the experiment, summaries of the debate leading up to roll-call votes were to be prepared for the purpose of evaluating whether it would be feasible to publish summaries of the debate together with details of the roll-call vote.
- A.1.2.4. Your Committee has reviewed the experiment of the past twelve months and has concluded that it is consistent with the Law Society's policy of openness in respect of the proceedings of Convocation that details of roll-call votes should be published. The question is therefore whether it is necessary to publish summaries of the debate at the same time.
- A.1.2.5. Your Committee has considered the experimental summaries produced during the past year. They would not be of great assistance in explaining why certain benchers voted in the way they did. In most cases, the wording of the motion is sufficient to permit an understanding of the reasons for the vote. It is the opinion of your Committee that the possibility of misinterpreting a particular benchers reasons for voting in a particular way is not sufficient to justify the time and work required to produce a summary.
- A.1.2.6. There is no current intention to discontinue production of the transcript of the proceedings of Convocation (although your Committee will be reviewing the experimental scheme of distribution of the transcript). Where necessary, therefore, the text of the transcript will be available to show the arguments advanced in the debate preceding a roll-call vote.

A.1.3. Financial impact

Your Committee foresees no significant financial impact if the recommendation is adopted. It should be possible to publish details of roll-call votes within the existing budget for Law Society publications.

A.1.4. Date for implementation

Your Committee recommends that the publication experiment be commenced immediately, commencing with the publication of details of any roll-call votes conducted at Convocation on October 23, 1992.

B.
ADMINISTRATION

No items to report.

C.
INFORMATION

C.1. STRATEGIC PLANNING CONFERENCE, SEPTEMBER 25-26, 1992

C.1.1. A comprehensive set of recommendations arising from the Strategic Planning Conference is being prepared by the staff in co-operation with the Strategic Planning Conference Subcommittee and the discussion group facilitators.

C.1.2. At its November meeting, your Committee expects to review the recommendations and to forward them to other Committees, or to Convocation, for action as appropriate.

C.1.3. The possibility of publishing some of the proceedings of the conference will be considered.

C.2. COMMITTEE REPORTS: PROCEDURE FOR PRESENTATION TO CONVOCATION

C.2.1. Your Committee had asked Colin McKinnon to formulate a recommendation for implementing the Treasurer's suggestion that committee reports dealing with routine and uncontroversial matters be "taken as read" at meetings of Convocation.

C.2.2. Your Committee was informed that new procedures, designed to give effect to the Treasurer's suggestion, had been developed by the Secretariat and were to come into effect immediately. In the circumstances your Committee decided to take no further action on the matter.

C.3. SURVEY OF BENCHERS' HOURS

C.3.1. In November, 1991, Convocation adopted a recommendation from the Research and Planning Committee that all benchers be asked to keep a record of the hours spent on Law Society business over the period January 1 to April 30, 1992. The recommendation arose from the work of the Benchers' Responsibilities Subcommittee which had conducted an "after the fact" survey of bencher hours in the Summer of 1990. The rationale for the 1992 survey was that, if there was to be further study of matters pertaining to bencher workload, there was a real need for data that were more precise.

C.3.2. Ms. Elliot Spears was retained by your Committee to analyze the results.

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- C.3.3. Your Committee discussed with Ms. Spears the ways in which the results could be presented so as to be of most use to benchers and other members of the Society.
- C.3.4. The results will be reported to Convocation.
- C.4. NON-BENCHER MEMBERSHIP ON LAW SOCIETY COMMITTEES
- C.4.1. On September 24, 1992, Convocation referred the issue of non-bencher membership on Law Society committees to the Research and Planning Committee for consideration.
- C.4.2. A subcommittee has been established to formulate recommendations to the Research and Planning Committee for debate on the issue of non-bencher representation on Law Society committees other than the Discipline Committee but including the Policy Section of the Discipline Committee.
- C.4.3. Abraham Feinstein and Jacinth Herbert have been asked to serve on the subcommittee and two other benchers will be appointed.
- C.5. DISPUTE RESOLUTION SUBCOMMITTEE
- C.5.1. The Dispute Resolution Subcommittee expects to present its report to the Research and Planning Committee in January 1993. Your Committee will be seeking to have the report included on the agenda of Convocation for debate in February 1993.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"T. Bastedo"
Chair

RIZZOTTO REASONS

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF an Application for
Admission to The Law Society of Upper
Canada by JOSEPH RIZZOTTO

CONVOCATION'S REASONS

The Appellant

1. Joseph Rizzotto was born on February 27, 1950. He was educated, for the most part, in Hamilton, graduating in 1973 from McMaster University with an Honours B.A. in Political Science. In 1983 he received an M.A. degree in Political Science from Carleton University.

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2. In 1978, Mr. Rizzotto began working for the government of the Northwest Territories. In June of 1979, he was assigned to work in Frobisher Bay, now known as Iqaluit. There he held the office of secretary-manager.

3. In the office of secretary-manager, he conceived and oversaw the implementation of an entire administrative structure and in the process acquired a reputation as an imaginative, insightful administrator almost singlehandedly responsible for transforming the municipality into a healthy and vital one.

4. Before December 9, 1985, Mr. Rizzotto's advice was sought, and usually followed, on various matters relating to municipal government. His was a position of great public trust. Then, on December 9, 1985, Mr. Rizzotto's life and fortunes changed, changed utterly.

The Election

5. December 9, 1985 was election day in Frobisher Bay. The offices contested were those of mayor, town council and educational council, and the town was full of expectation that the incumbent mayor, with whom Mr. Rizzotto had worked closely, would be defeated.

The Events Leading to Mr. Rizzotto's Criminal Conviction

6. On election day, Mr. Rizzotto arrived at his office at 7:00 a.m., one-half hour earlier than usual, and one hour earlier than the office was scheduled to open to the public.

7. What happened next is succinctly described in this extract from the Committee's decision:

When Mr. Rizzotto arrived at the office, he entered the office of Ms. Charlene MacCormick, the Director of Administrative Services (a position which reported to him) opened the safe to which he had normal access and which he opened regularly, saw the election documents, and there and then, spontaneously decided to make photocopies of the original ballots with a view to altering the election results.

During that election, the number of ballots could be increased simply by photocopying. The system at that time involved having one original ballot and photocopying the required number of ballots, rather than having them printed.

These were then placed in the safe in Ms. MacCormick's office. At the polls, the Deputy Returning Officers (D.R.O.'s) were to initial the back of the marked ballot, fold it, and pass it to the voter. Before the ballot was placed in the ballot box, the D.R.O. was to verify that the ballot contained his or her initials and was a proper ballot. He or she would then see this again when counting ballots.

At a training session, the D.R.O.'s were asked to hand in a sample of the initials they would use on the ballots on election day. That sample list was in the safe with the ballots.

Before anyone else arrived at the office on election morning, Mr. Rizzotto made over 200 additional photocopies of the ballot (the evidence at his trial indicated that there were 217 forged ballots). Over a period of time in the morning, he checked off the name of the incumbent mayor and other councillors' names at random on each of these ballots.

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Next, he took a sample sheet of the initials of the D.R.O.'s. He practised doing the initials of the six D.R.O.'s. By midafternoon, he attempted to falsify the initials. He folded each ballot in the appropriate manner and then forged the initials of the D.R.O.'s on the 217 ballots. These were then hidden and "probably locked" in his desk.

Around 4:00 p.m., Mr. Rizzotto and Ms. MacCormick went to 4 of the 5 polls - the 6th was an advance poll - and picked up the ballot boxes. New boxes were left there. The full boxes from these polls and the advance poll were then placed in Mr. Rizzotto's office.

Around 5:00 p.m., Mr. Rizzotto told Ms. MacCormick that he wanted a rest. He went into his office, locked the door, and for the next 20 minutes opened the ballot boxes, took out the real ballots and replaced each one with ballots that he had forged. Once that was completed, he advised Ms. MacCormick that he was unable to rest, and left the office with the purloined "real" ballots in a green garbage bag, which was later discovered in his basement by the police.

When the polls closed at 7:00 p.m., Mr. Rizzotto and Ms. MacCormick brought the D.R.O.'s and the ballot boxes to the town office for counting. It was at this point that the forged initials were noticed. Earlier in the day, one of the D.R.O.'s had taken ill unexpectedly. A new D.R.O. had been brought in, but his initials had not been included in the sample initial sheet. Mr. Rizzotto, therefore, had not been able to practice forging these initials. The substitute D.R.O. noted that the initials on the back of certain ballots for his poll were not made by him. Ms. MacCormick advised the police and the fraud was discovered.

As a result of the fraud, a new election had to be held in Frobisher Bay. As an aside, despite Mr. Rizzotto's fraudulent efforts, the incumbent mayor was so soundly defeated that no re-election was required for his position.

The Criminal Charges, Conviction and Sentencing

8. Mr. Rizzotto was charged criminally with nine counts of unlawfully forging documents in an election. On the morning of the day set for trial, he entered a guilty plea to one count, which read as follows:

Joseph Rizzotto of the Town of Frobisher Bay in the Northwest Territories stands charged that he, on or about the 9th day of December, A.D., 1985, at or near the Town of Frobisher Bay in the Northwest Territories, did unlawfully damage election documents, to wit: ballots, contrary to Section 335 (1) of the Criminal Code.

9. Following his conviction, Mr. Rizzotto appeared before Mr. Justice T. David Marshall on October 15, 1986 for sentencing. His counsel was Mr. D. Cooper. He was sentenced to a custodial term of one year and fined \$15,000.00.

10. In delivering the sentence, Mr. Justice Marshall said, among other things:

... One can expect that this young man will, when he has been punished, never do anything like this again...

11. Mr. Rizzotto served approximately eight months of the custodial term before being released on parole.

12. In September, 1987, eleven months after entering the guilty plea, Mr. Rizzotto wrote to The Law Society of Upper Canada ("Law Society") inquiring whether his criminal conviction would bar him from becoming a lawyer.

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13. On September 30, 1988, Mr. Tinsley, Secretary of The Law Society, advised Mr. Rizzotto that the Admissions Committee had considered the information he had placed before it and had concluded that a hearing before a Committee would be necessary. Mr. Tinsley specifically advised Mr. Rizzotto that the Admissions Committee was of the opinion that:

...the offence for which you were charged may, prima facie, prevent you being called to the Bar.

14. In December, 1987, Mr. Rizzotto applied to the University of Windsor Law School and was accepted as part of the incoming class of 1988. Three years later, at the 1991 Spring Convocation, Mr. Rizzotto received the Bachelors of Law degree.

15. Upon graduation, Mr. Rizzotto applied to The Law Society to obtain standing as a student member. Pursuant to Section 27 of The Law Society Act (the "Act"), the Law Society required him to appear before a Committee.

The Statutory Framework

16. The relevant sections of the Act are as follows:

- 27.- (1) Every application for admission to the Society shall be on the prescribed form and be accompanied by the prescribed fees.
- (2) An applicant for admission to the Society shall be of good character.
- (3) Non applicant for admission to the Society who has met all admission requirements shall be refused admission.
- (4) No application for admission to the Society shall be refused until the applicant has been given an opportunity to appear in person before a committee of benchers.
- (5) Where an applicant for admission to the Society is refused admission, he is entitled to a statement of the reasons for the refusal.
- (6) Where an applicant for admission, to the Society has been refused, another application based on new evidence may be made at any time.

The Issue

17. The issue before the Committee was whether or not Mr. Rizzotto was "of good character", as that term is used and understood in the context of subsection 27(2) of the Act.

The Onus

18. The onus is upon Mr. Rizzotto to establish on the balance of probabilities with clear, cogent and compelling evidence that he is now of good character. In December of 1985, when he committed the offence for which he was subsequently convicted and punished, he clearly was not of good character.

The Meaning of the Phrase "of Good Character"

19. Convocation accepts the following definition of good character formulated in Re: P and revised in Re: Spicer:

Character is that combination of qualities or features distinguishing one person from another. Good character connotes moral or ethical strength, distinguishable as an amalgam of virtuous attributes or traits which would include, among others, integrity, candour, empathy and honesty.

20. Convocation likewise accepts that section 27 presupposes no crime or conduct to be so heinous as to be inherently unforgivable. There always exists at least the possibility of reparation and rehabilitation. Whether or when a person makes reparation or achieves rehabilitation is a question of fact in each case.

The Admissions Committee's Decision

21. Following its deliberations, the Committee concluded that Mr. Rizzotto was not of good character and "should not be permitted admission to The Law Society of Upper Canada". The Committee's reasons in arriving at this determination are reprinted here:

The offence itself is quite different from those which the Society has seen in the past. It is an offence that is highly relevant to the practice of law. It involves a clear breach of trust. It involves dishonesty. Furthermore, as Mr. Rizzotto repeatedly states during his evidence, it is anti-democratic. He maintained that he was a "seasoned administrator, trained in aspects that dealt with democracy and history" and that his intent had been to "subvert the democratic process" and to impose his views over the community's.

His actions had an enormous impact on his community apart from the cost and inconvenience of holding re-elections. Mr. Dennis Patterson, when he heard that Mr. Rizzotto was applying to become a lawyer, wrote the Law Society in September, 1991. Mr. Patterson, at the time he wrote, was the Government Leader of the Northwest Territories and a lawyer admitted to the bar in Nova Scotia, British Columbia and the Northwest Territories. He wrote partly as follows:

I cannot overstate the anger, revulsion and shock felt by our citizenry when it was discovered that a person in a position of great public trust, Mr. Rizzotto, had tampered with the election...Until convicted, Mr. Rizzotto displayed arrogance and no remorse. All of our townspeople felt betrayed by this serious breach of public trust. The whole community could have been victimized with this tampering with the democratic process.

I cannot emphasize enough the injury and sense of outrage felt by citizens of our community about this crime against democracy. I am writing to offer you the benefit of my personal opinion that it would be against the public interest and a particular affront to the citizens of Iqaluit if this man were to be approved by the Law Society of Upper Canada to hold the public trust in the practise of law in Ontario or anywhere else in Canada.

The letter speaks for itself. The committee strongly believes that the public has a right to expect that articling students and lawyers will not be subverting the democratic process. Indeed, arguably they have a special duty not to do so.

Reason(s) for the offence:

Mr. Rizzotto was unable to provide any explanation for his behaviour on that day. He said he found all the explanations "wanting". Significantly, he does not appear to have made any effort to try, either on his own or through counselling with a professional, to glean some insight into his own behaviour on that day, to try to understand what would compel a well-educated person in such a significant position of authority to intentionally subvert the very democratic process in which he so believes.

Instead, the reasons given for the behaviour essentially amount to job stress and a desire to maintain the status quo. He stated that the job he held was a very stressful one and that he was a hard worker "almost to a fault".

When he opened the safe, he decided on the spur of the moment that he did not need "this additional stress". A new mayor would bring changes to the workplace and, as the presentence report indicates, he "didn't feel inclined to deal with" those changes. In any case, he testified at the hearing that he felt he "knew better" than the electorate.

In a letter of support dated June 27, 1988, Donald Cooper stated:

Mr. Rizzotto virtually ran the Town of Frobisher Bay by himself and the Mayor heretofore had been a figurehead for all intents and purposes...it became apparent to Mr. Rizzotto that there was a likelihood (sic) the incumbent (sic) Mayor would be defeated by a challenger who had publicly indicated that he intend to make a lot of changes...I am sure he wrestled with the problem at hand and finally decided that he, as 'protector', had to do something to save the people from themselves.

Impact of these "reasons" on his ability to practice law:

Lawyers deal with public trust on a daily basis. They are under pressure on a daily basis. There is a considerable amount of stress in the legal practice, both as a student-at-law and as a lawyer.

The committee is not satisfied that this apparently aberrant behaviour could be prevented in the future if the applicant again finds himself in a position of high stress. As well, stress, combined with a desire to maintain the status quo and the arrogance of assuming one's personal views are better than the community's, is an exceedingly dangerous blend. Mr. Rizzotto has demonstrated that as recently as six years ago, he was incapable of making the right choice. How can one ensure that he does not suffer another such "aberration"? It is the committee's view that the risk of his again abusing the public's trust is too high.

Mr. Rizzotto's character at the time:

Joseph Rizzotto was a 35 year-old university graduate who had been involved in the working world in progressively more senior positions for a number of years when he decided to affect the election results in Frobisher Bay. His behaviour cannot be categorized as a foolish indiscretion of youth or a result of a lack of maturity. There is no suggestion that he had a drug or alcohol problem. There was no evidence of any psychiatric or psychological problems.

Mr. Rizzotto went to great lengths to stress the spontaneous nature of the crime. While the actual realization that the democratic process could be subverted might have been spontaneous, the feat of actually completing the thought was calculated and took place over a 12 hour period. For the first ten hours of that day, Mr. Rizzotto could easily have changed his mind and no one would have been the wiser. Indeed, he testified that he wrestled with it until the last minute. Instead, he embarked on a systematic and calculated enterprise of photocopying over 200 copies, practising forging initials, checking off ballots, folding ballots appropriately, forging initials, picking up ballot boxes, replacing the legitimate ballots with his fake/forged ones, etc., etc.

Application to law school:

In September, 1987, eleven months after he pleaded guilty and three months after his release date from prison, Mr. Rizzotto wrote to the Law Society of Upper Canada asking whether his criminal conviction would be a bar to becoming a lawyer in Ontario. He was of the view that by the time he applied for membership in the Law Society "in 1993 or 1994 I will have applied to have my criminal record expunged and be pardoned by the Government of Canada". His presumptuousness in assuming that the granting of a pardon for a serious indictable offence is akin to automatic is somewhat surprising, possibly arrogant, and certainly naive. Furthermore, his attitude seemed to be that a pardon would essentially "wipe clean" his criminal background. The absence of any expression of remorse or apology for his behaviour in that two-page letter to George Thomson, former director of Education, is quite telling with respect to his moral character.

At the hearing, Mr. Rizzotto testified that he has begun the process of applying for a pardon, but would not in any event be eligible until the fall of 1992. As of this date, therefore, he has not been pardoned.

It is clear that Mr. Rizzotto undertook legal studies with no assurance that he would ever be able to practice law. Indeed, on September 30, 1988, Mr. Richard Tinsley, Secretary to the Law Society, wrote to the applicant to advise him that the Admissions Committee had considered material that he had placed before it and had concluded that a hearing before the Admissions Committee would be necessary. He was further advised that "[t]he Committee emphasizes that it is of the opinion that the offence for which you were charged may, prima facie, prevent your being called to the Bar".

Regardless, Mr. Rizzotto continued in his quest to become a lawyer. In December, 1987 he applied to the University of Windsor Law School. He was accepted and ultimately graduated with an LL.B. in 1991.

Professor Neil Gold, who had been the Dean of Windsor Law School at the time, testified that a criminal record would not have been a bar to admission to the law school and, in any case, it was up to the Law Society to determine eligibility to practice law.

Professor Gold advised that Windsor Law School, unlike the other law schools, looks not only at the student's academic record and Law School Aptitude Test results, but equally at other qualities such as community spiritedness, concern for the relationship of law to society, and contribution by the student to his or her own community. The orientation is on public interest. The student is asked to complete a personal profile and there is an expectation that the student will be candid and forthright, and will be honest about whatever is expressed in the profile.

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This aspect of the University of Windsor's application is important. After reviewing Mr. Rizzotto's application, Professor Gold saw nothing false in the application. While there was no mention of the criminal record, students are not asked about that.

In fact, the committee believes there were three false elements to the application which, if one knew Mr. Rizzotto's history, would have become apparent. They are as follows:

1. Mr. Rizzotto said he worked from "May 1986 to September 1987" (emphasis added)
2. He listed his occupation as private consultant
3. He said his services were "used by various individuals and organizations (Iqaluit/Frobisher Bay, N.W.T.)"

With respect to the first element, Professor Gold had not noticed - nor would there have been anything to alert him - that Mr. Rizzotto noted that he had worked as a private consultant from "May 1986 to September 1987". Mr. Rizzotto, during cross-examination, conceded that Professor Gold had read it "the wrong way".

The committee is of the view that Professor Gold read it in exactly the way it had been intended to be read - that is, that the work had been continuous. The truth is that Mr. Rizzotto was in prison on a full-time basis for at least four of those months, and was on day parole until June 16, 1987. As a result, it was impossible for him to be employed on a full-time basis.

For the purpose of his application to the Law Society, he amended his most recent curriculum vitae. This amended version makes it clear that most of the work was done in two separate months: May, 1986 and August, 1987. Mr. Rizzotto, during cross-examination on this point, was evasive and did not leave the impression that he was being truthful.

With respect to the second element, the description of his consulting services is misleading. While some of the work was clearly related to work that he had done, some of it was not. For example, he said he once helped someone update a curriculum vitae. Some would argue that this does not fall into the category of "private consultant". Presumably this is the "personnel matter" referred to under "job activity".

Insofar as the third element is concerned, the inference was that Mr. Rizzotto was living in Frobisher Bay when in fact he was in prison several thousand miles away in Hay River Alberta.

Mr. Rizzotto, in his application to the Windsor Law School, carefully considered every word in his application. He said that he knew they were looking for people who would make a contribution to the community and that he, therefore, tried to put forth his best picture. That is quite clear from even a cursory reading of the application. Appropriate words are underlined and stressed. It is written in a way that is designed to impress. There is nothing wrong with that. Most students would do the same. What is wrong, however, is the clear attempt to mislead the reader of the application into thinking that for a fixed period of time he was gainfully employed in Frobisher Bay on a full-time basis.

Mr. Rizzotto testified that he did not disclose his criminal record in the application form, but if asked, he would have acknowledged it. However, at the same time, he said that he thought mentioning the criminal record might be adverse to his application and he wanted to be accepted.

While it is not the vital factor in the committee's decision, it is the committee's view that Mr. Rizzotto should have made reference to his criminal record in the personal profile. This is especially important at Windsor Law School because they consider the profile and self appraisal very seriously. His behaviour shows that he was still prepared to deceive if that would assist him.

Mr. Rizzotto testified that he had learned humility in prison and had been instrumental in assisting other inmates. Indeed, they elected him as President of the Inmate Advisory Committee. He said that he believed he had made a difference while he was in prison. This is all positive information that could have been included in the self appraisal. The omission is misleading and, in the committee's view, especially having had the opportunity to notice Mr. Rizzotto's demeanour while he gave evidence on this respect, was calculated to mislead.

Rehabilitation and Joseph Rizzotto's character now:

It is reasonable to expect that a person's character would have been formed by the time the individual is 35 years old. The question the committee finds itself asking is whether Mr. Rizzotto, who is now 41 years old, has reformed in the intervening six years so that he is now of "good character". This is indeed the question that must be addressed.

While certainly Mr. Rizzotto has likely changed in the last six years, and letters of support tendered in evidence suggest this, his demeanour on the stand displayed a certain caginess, bordering on arrogance. During a firm but unaggressive cross-examination he was, at times, evasive, argumentative and combative. In many respects, his answers missed the aura of truth that one seeks in cases such as this. The committee simply is unable to believe important components of Mr. Rizzotto's testimony.

The committee has carefully scrutinized all the written and oral evidence. The committee very carefully examined the way in which Mr. Rizzotto gave evidence. Having done this, the committee is not satisfied that Joseph Rizzotto has reformed, and has no hesitation in saying that he is not of the "good character" required under subsection 27(s) of the Law Society Act.

Convocation's Jurisdiction

22. Mr. Rizzotto appealed to Convocation from the Committee's decision.

23. Convocation concluded that it had jurisdiction to hear Mr. Rizzotto's appeal because of Rule 25 which reads:

Except where a committee is expressly given power to act by Convocation and except in routine or inconsiderable matters, the exercise of any power by a committee is subject always to the approval of Convocation.

The Applicable Tests

24. Convocation's consideration of a Committee's decision is not a hearing de novo. On considering a Committee's decision under section 27, Convocation will only interfere with the decision if it finds a palpable and over-riding error on the Committee's part, or when it concludes that the Committee's decision was clearly wrong or predicated upon an erroneous principle, or that the Committee was without jurisdiction.

25. Convocation concludes that in rejecting Mr. Rizzotto's application for admission to the Society, the Committee made errors in principle. The Committee decided, for example, that Mr. Rizzotto's letter of September, 1987 to George Thomson, the former Director of Education, ought to have had some "expression of remorse or apology for his behaviour" and that the letter was "quite telling with respect to his moral character". Convocation disagrees.

26. In Convocation's view, the Committee erred in concluding that it was incumbent upon Mr. Rizzotto to make an apology for or an explanation of his past criminal conduct in his letter to Mr. Thomson. Mr. Rizzotto's letter to Mr. Thomson was an inquiry he was entitled to make. In requesting information, he was not required to offer an apology or an explanation for his behaviour.

27. The Committee recited Mr. Rizzotto's testimony that while in prison he had learned humility and had been instrumental in assisting other inmates, that he had been elected President of the Inmate Advisory Committee, and that "he had made a difference" while he was in prison. From such evidence, the Committee drew the following conclusion:

This is all positive information that could have been included in the self appraisal (a portion of the application to the University of Windsor law school). The omission is misleading and, in the committee's view, especially having had the opportunity to notice Mr. Rizzotto's demeanour while he gave evidence on this respect, was calculated to mislead.

28. Convocation believes, to the contrary, that the Committee had no cogent basis for concluding that "the omission was misleading" and that Mr. Rizzotto's evidence "was calculated to mislead". Dean Gold's testimony established that it was not incumbent upon Mr. Rizzotto to disclose his criminal conviction for the purpose of making application to Windsor's law school. In fact, law schools have specifically decided not to inquire about or compel the disclosure of applicants' criminal records. It does not follow, therefore, that Mr. Rizzotto's omission to mention his involvement with the inmate advisory committee was misleading, and it does not follow that the omission was calculated to mislead.

29. Mr. Rizzotto was entitled to cast his application to law school in what he considered to be the best possible light consistent with accuracy. He was under no obligation to disclose his criminal conviction or his involvement with or in the penitentiary system. The Committee essentially concluded, erroneously, that Mr. Rizzotto had such a positive obligation. There was no evidentiary basis to support this conclusion.

30. The Committee also found that it did not believe Mr. Rizzotto's testimony. The process by which it arrived at this determination is expressed in the decision this way:

While certainly Mr. Rizzotto has likely changed in the last six years, and letters of support tendered in evidence suggest this, his demeanour on the stand displayed a certain caginess, bordering on arrogance. During a firm but unaggressive cross-examination, he was, at times, evasive, argumentative and combative. In many respects, his answers missed the aura of truth one seeks in cases such as this. The Committee simply is unable to believe important components of Mr. Rizzotto's testimony.

The language here suggests that although the Committee felt Mr. Rizzotto was being less than truthful under oath, it could not identify or articulate any specific instances of dissimulation. But no one, and no Committee, is privy to a person's heart and soul. It is, therefore, only fair that if a person is to be denied admission to the Society on the ground that he or she has given untruthful evidence under oath, then the Committee concluding the person was untruthful is obliged to specify and justify its conclusion by reference to the evidence. This was not done in the case of Mr. Rizzotto. Instead, the Committee relied, in part, upon the fact that Mr. Rizzotto withheld from his law school application any reference to his criminal conviction and subsequent incarceration. But as it has been earlier stated, Convocation believes that the Committee erred in reaching this conclusion. The Committee's ultimate finding that Mr. Rizzotto was not a credible, truthful witness rests, at least in part, upon this untenable foundation.

31. In deciding that Mr. Rizzotto was not of good character, the Committee also applied an erroneous standard and thereby made an error in principle. The standard posed by the Committee was as follows:

...Mr. Rizzotto has demonstrated that as recently as six years ago, he was incapable of making the right choice. How can one ensure that he does not suffer another such "abberation"? It is the Committee's view that the risk of his again abusing the public's trust is too high.

32. Convocation respectfully believes that the relevant and applicable test is not whether the risk of further or future abuse by an applicant upon the public trust is too high, but simply whether the applicant has established her or his good character on the balance of probabilities. Mr. Rizzotto did not need to demonstrate good character beyond a reasonable doubt, nor was he obliged to provide a warranty or assurance that in the future he would not breach the public trust. The Act does not permit a Committee to apply any other test than that relating to the question of an applicant's good character.

33. Convocation also believes that the Committee erred in principle by giving disproportionate weight to the opinion expressed by Mr. Dennis Patterson, a solicitor and then Government Leader of the Northwest Territories. Mr. Patterson's views are undoubtedly a fair, frank and reliable barometer of the public's outrage and abhorrence in response to Mr. Rizzotto's criminal behaviour. But underlying Mr. Patterson's position is the unexamined, uncritical assumption that if the crime is serious enough, then the offender can never again be said to be "of good character". The justice sought in the views expressed by Mr. Patterson is nowhere tempered by mercy. Rehabilitation, is thus inconsequential. In summary, Mr. Patterson's views are inconsistent with the principle that no person is ever foreclosed from being or becoming of good character.

23rd October, 1992

34. In overvaluing the views expressed by Mr. Patterson, the Committee undervalued the evidence of Dean Gold and the letter from Professor Whiteside of the University of Windsor's Faculty of Law. Professor Whiteside is a senior and highly respected member of the profession. He is of sterling reputation and integrity. In addition to his long-standing appointment as Associate Dean and Chair of the Admissions Committee in the Faculty of Law, he was also at the material time Chair of the Windsor Police Services Board. More than most, he is highly qualified to deal with such issues as rehabilitation and good character. Both Dean Gold and Professor Whiteside are respected members of the legal profession who worked closely with Mr. Rizzotto for three years at the University of Windsor Law School. Each has vouched for Mr. Rizzotto's good character.

35. Convocation believes that the evidence of Dean Gold and Professor Whiteside is sufficient to permit it to substitute its opinion for that of the Committee in this case given the errors in principle particularized above.

Convocation's Disposition

36. For these reasons, Convocation concluded that Mr. Rizzotto is now of good character. He is permitted to enter the bar admission course as a student-at-law and, if successful, to be called to the bar upon the following conditions suggested by Mr. Rizzotto's counsel:

1. That his Principal reports in writing to the Admissions Committee as to his progress as a student-at-law at or about the time of the completion of the employment portion of his Articles.
2. That, if called to the Bar, Mr. Rizzotto will not for a period of three years from the date of his Call, practice otherwise than with others either as an employee or a partner or an associate.

Note: Amendment, see below

3. That Mr. Robert B. Munroe of Hamilton (or such other person approved by and satisfactory to Mr. Gavin MacKenzie or his successor) shall for a period of three years assess Mr. Rizzotto's progress annually and report in writing to the Admissions Committee.
4. That Mr. Rizzotto shall respond in writing to the Admissions Committee during the same three-year period with respect to any matter which the Admissions Committee considers a report is required.
5. That Convocation reserves to itself the right to reconsider this decision to permit Mr. Rizzotto to proceed at any time up to but not past the date upon which Mr. Rizzotto, if successful, is called to the Bar.

"Harvey T. Strosberg"

September 14, 1992

An amendment was made to the Reasons on page 21, number 36, subparagraph (2) that at the end of the sentence the words "or an associate" be deleted, so that the sentence would then read "That, if called to the Bar, Mr. Rizzotto will not for a period of three years from the date of his Call, practice otherwise than with others either as an employee or a partner."

SEPTEMBER CONVOCATION MINUTES - September 24th, 1992

(See Draft Minutes in Convocation file)

UNAUTHORIZED PRACTICE COMMITTEE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of October 1992 at 10:30 a.m., the following members were present: D. O'Connor (Chair), R. Cass, P. Copeland, G.H.T. Farquharson, N. Finklestein, M. Hickey. Also in attendance were: A. John and J. West.

B
ADMINISTRATION

1. COMPLAINTS/INVESTIGATIONS

Your Committee authorized further investigation in two matters.

2. INTELLECTUAL PROPERTY TRIBUNAL

In June 1992, the Unauthorized Practice Committee established a subcommittee to examine the entitlement of non-lawyers to appear before the proposed Intellectual Property Tribunal. The Chair of the Subcommittee has written to the Committee with the recommendation that the work of the Subcommittee be terminated. The reasons given are as follows:

- (a) The Intellectual Property Section of the Canadian Bar Association has recommended that agents be permitted to appear before the Tribunal largely because they are an established professional group with their own code of ethics.
- (b) Other tribunals have not opposed the role of agents.
- (c) The agents who would appear are likely to be highly skilled professionals.

At the September 1992 meeting of the Unauthorized Practice Committee, the issue of patent agents providing legal opinions under the Patent Act was added to the mandate of the Intellectual Property Tribunal Subcommittee.

Your Committee supports the recommendation to dissolve the Subcommittee and does not consider it necessary at this time to investigate the activity of patent agents.

3. PRIORITIES

The following priorities were approved for the work of the Unauthorized Practice Committee in the current year.

23rd October, 1992

1. Selection

Careful selection of matters for prosecutions and/or appeal both with a view to important legal issues and available resources.

2. Publicity

Greater publicity of cases which the Law Society prosecutes successfully.

3. Statutory Amendment

Obtaining amendments to the Law Society Act which would increase the effectiveness of prosecutions under Section 50. This would include:

- (a) The ability to obtain a Restraining Order before the matter goes to trial and without the need to obtain a conviction first.
- (b) Ability to obtain a Permanent Restraining Order.
- (c) Providing consumers with more remedies, such as restitution of fees and/or damages.
- (d) Clarifying the meaning of the words "acting" in Section 50/ Does it, for example, allow for a conviction when the evidence relates to only one prohibited act?
- (e) Increasing the maximum fine from \$10,000 to \$50,000.

C.
INFORMATION

Attached hereto is a list of current prosecutions.

ALL OF WHICH is respectfully submitted

DATED the 23rd day of October, 1992

"D. O'Connor"
Chair

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

Item C - Copy of list of current prosecutions.

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION

Ms. Elliott spoke to Item C-C.1 re: Project on workplace policies.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The WOMEN IN THE LEGAL PROFESSION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of October 1992, at 11:30 a.m., the following members being present: S. Elliott (Chair), M. Cullity, J. Lax, J. Monaghan, F. Mohideen and J. Spence.

Also present: C. Ateah, A. Brockett, and S. Hodgett.

A.
POLICY

No matters to report.

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

C.1. PROJECT ON WORKPLACE POLICIES

- C.1.1. As your Committee continued its discussion of priorities for this year, a consensus developed that the Committee should undertake a major effort to deal with the issues identified by *Transitions* including workplace policies and their impact on the lives of all lawyers. The lack of parental leave policies, child-care policies, and alternative work arrangements in the legal profession is one of the most frequently mentioned concerns of lawyers who speak to members of this Committee about the recommendations in the *Transitions Report*. These issues are of particular concern to women in the profession but are relevant to all lawyers.
- C.1.2. The planning of this project is in its earliest stages. The Committee envisions an ambitious project with opportunities for broad consultation with the membership. The project may also be of interest to other Committees. The end result will be a body of information concerning these issues, model policies and increased awareness of the problems.
- C.1.3. The Chair and staff will present a plan of action at the Committee's next meeting.

23rd October, 1992

C.2. JOINT SUBCOMMITTEE ON SEXUAL HARASSMENT BY ARTICLING PRINCIPALS

C.2.1. The Report of the Legal Education Committee to Convocation on July 10, 1992 proposed a joint-Subcommittee consisting of members of the Discipline Policy Committee and the Legal Education Committee. The Report was amended at Convocation on July 10 to include a representative of the Women in the Legal Profession Committee on the joint-Subcommittee.

C.2.2. Your Committee discussed the joint-Subcommittee, noted that the other members had not yet been appointed, and concluded that a policy concerning sexual harassment by articling principals should be formulated as soon as possible.

C.3. ACTIVITIES OF THE COMMITTEE

C.3.1. Various members of the Committee are actively involved in and will be keeping the Committee informed about the Joint Subcommittee on Sexual Harassment by Articling Principals, the Joint Subcommittee on Requalification and the Canadian Bar Association Task Force on Gender Equality Conference.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1992

"S. Elliott"
Chair

THE REPORT WAS ADOPTED

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IN CAMERA

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IN CAMERA Content Has Been Removed

23rd October, 1992

CONVOCATION ADJOURNED AT 12:45 P.M.

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The Treasurer and Benchers had as their guest for luncheon Ms. Marina R.C. Tjanetis who was recently awarded a Fox Scholarship.

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Confirmed by Convocation this day of , 1992.

Treasurer