MINUTES OF CONVOCATION

Friday, 22nd January, 1999
8:30 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Aaron, Adams, Armstrong, Arnup, Backhouse, Banack, Carey, Carpenter-Gunn, Carter, R. Cass, Chahbar, Cole, Copeland, Crowe, Curtis, DelZotto, Eberts, Epstein, Farquharson, Feinstein, Furlong, Gottlieb, Harvey, Jarvis, Keenan, Krishna, Lamek, Lamont, Lawrence, MacKenzie, Manes, Marrocco, Millar, Murphy, Murray, O'Brien, Ortved, Puccini, Robins, Ruby, Scott, Stomp, Swaye, Topp, Wardlaw, Wilson and Wright.

.....

The reporter was sworn.

.....

IN PUBLIC

.....

TREASURER'S REMARKS

The Treasurer announced that the Legal Aid Act and the Law Society Amendment Act were passed by the Legislation and received royal assent in December 1998.

The Treasurer thanked all who were involved in the process.

MOTION - Appointments

It was moved by Mr. MacKenzie, seconded by Mr. Murphy that William Trudell be appointed to the Judicial Appointments Advisory Committee as the Law Society's representative, effective immediately.

Carried

MOTION - REPORTS TO BE TAKEN AS READ

It was moved by Mr. MacKenzie, seconded by Mr. Murphy that the Draft Convocation Minutes for November 11th, 26th and 27th, 1998 and the Report of the Acting Director of Education and Addendum be adopted.

Carried

Draft Minutes of Convocation - November 11th, 26th and 27th, 1998

THE DRAFT MINUTES WERE ADOPTED

(see Draft Minutes in Convocation file)

Report of the Acting Director of Education and Addendum

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Acting Director of Education asks leave to report:

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, January 22nd, 1999:

Joseph Richard Grégoire Chatelain
Samuele John Ramadori

B.1.3. (b) Transfer from another Province - Section 4

B.1.4. The following candidate has completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now applies to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, January 22nd, 1999:

Annette Pereira	Province of Quebec

B.2. APPLICATIONS TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

B.2.1. The following apply to be certified as foreign legal consultants in Ontario:

Nancy Hoi Bertrand	Bar of the State of New York, - Shearman & Sterling
Jason R. Lehner	Bar of the State of New York, - Shearman & Sterling
Helen Leslie McCallum	Bar of the State of New York, - Shearman & Sterling
Richard J. B. Price	Bar of the State of New York, - Shearman & Sterling

B.2.2. Their applications are complete and each have filed all necessary undertakings.

B.3. MEMBERSHIP UNDER RULE 50

B.3.1. (a) Retired Members

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

Charles Cameron Finley	Woodbridge, ON
Arthur Douglas Gardner	Agincourt, ON
John Alfred Geisler	Olds, AB
Steven Walter Lukinuk	Thunder Bay, ON
Ivy Joy McGrath	Mississauga, ON
Francis Leo O'Donnell	West Hill, ON
Paul Charles Ryan	Kingston, ON
Sol Morton Shmelzer	Ottawa, ON
David Harilal Sookram	Concord, ON

B.3.3. (b) Retired Members - Retroactive

B.3.4. The following members are at least sixty-five years of age and fully retired from the practise of law, and request permission, under Rule 50 of the Law Society Act to continue their memberships in the Society without payment of annual fees retroactive to the date each was eligible to retire as follows:

Marvin Jacob Roebuck	Toronto, ON	September 25, 1998
Stephanie Jessie Wychowanec	Willowdale, ON	September 25, 1998
Paul Chandler Harris	Toronto, ON	November 27, 1998
George Stephenson Taylor	Toronto, ON	November 27, 1998

B.3.3. (c) Incapacitated Members

B.3.4. The following member is incapacitated and unable to practise law, and request permission to continue her membership in the Society without payment of annual fees:

Anita Agnes Mary Anthony	Scarborough, ON

B.4. RESIGNATION - SECTION 12 OF REGULATION 708 MADE UNDER THE LAW SOCIETY ACT

B.4.1. The following members apply for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. In all cases the annual filings are up to date. In cases where the member was engaged in the practice of Ontario law for any amount of time, the member has declared that all trust funds and clients' property for which they were responsible have been accounted for and paid over to the appropriate persons. They have further declared that all clients' matters have been completed and disposed of, or arrangements made to the clients' satisfaction to have their papers returned to them, or have been turned over to another lawyer. The Complaints, Audit and Staff Trustees departments all report that there are no outstanding matters with these members that should prevent them from resigning. These members have requested that they be relieved of publication in the Ontario Reports:

1. William John Beckley of Jeddah, Saudi Arabia was called to the Bar on March 29, 1977 and has not practised Ontario law since August 31, 1998.

2. Judith Kathleen Begley of St. John's, Newfoundland was called to the Bar on February 19, 1997 and practised law from March 3, 1997 to December 31, 1998.

3. Solomon Abraham Chrom of Toronto, Ontario was called to the Bar on March 22, 1991 and practised Ontario law from October 1991 to August 31, 1992. The member's rights and privileges have been suspended since November 1, 1994 for non-payment of the annual fee.

4. Ian Donald Gray of Ottawa, Ontario was called to the Bar on March 29, 1989 and practised Ontario law from March 30, 1989 to April 30, 1997.

5. Claire Carla Peltz of Winnipeg, Manitoba was called to the Bar on January 27, 1989 and has not practised Ontario law since December 2, 1992.

6. Robert John Pezzack of Mississauga, Ontario was called to the Bar on April 13, 1962 and has not practised Ontario law since April 30, 1997.

C. INFORMATION

C.1. CHANGE OF NAME

C.1.1.

From	To
Susan Lynn Crotteau	Susan Lynn Kania (Name Change Certificate)
Joyce Lee	Joyce McKay (Marriage Certificate)
Georgia Psimouli	Georgia Swan (Marriage Certificate)
Samantha Elizabeth Simpson	Samantha Elizabeth Richmond (Marriage Certificate)
Terra Lee Strong	Terra Lee Klinck (Name Change Certificate)

C.2. ROLLS AND RECORDS

C.2.1. (a) Deaths

The following Members have died:

Charles Blaine Bowyer Brampton	Called: September 20, 1956 Died: September 24, 1998
Lillian Sandler Toronto	Called: November 19, 1931 Died: October 14, 1993
John Patrick Watson Ottawa	Called: March 25, 1966 Died: January 20, 1997
Arnold Epstein Toronto	Called: March 25, 1966 Died: October 29, 1998
Clifford Everard Shand Oakville	Called: September 20, 1945 Died: November 3, 1997
David Augustus Coon Toronto	Called: June 28, 1956 Died: November 19, 1997
Ronald Edward Sobier Ottawa	Called: April 19, 1963 March 5, 1998
Benjamin Cope Thompson Peterborough	Called: June 29, 1950 Died: March 23, 1998
John Charles McTague Sutton West	Called: September 16, 1948 Died: April 25, 1998
John Albert Mullin Barrie	Called: June 16, 1942 Died: June 4, 1998
Kenneth Archibald Foulds Thornhill	Called: June 15, 1939 Died: July 3, 1998
Robert Murray Bell Toronto	Called: September 15, 1938 Died: August 12, 1998
Andre Raymond Romeo Huneault Sudbury	Called: April 6, 1984 Died: September 4, 1998
Stephen Jerome Lende North York	Called: March 25, 1966 Died: September 5, 1998
Auguste Vincent Westmount	Called: November 17, 1949 Died: October 21, 1998
Fraser William MacDonald Brantford	Called: September 16, 1948 Died: November 7, 1998
Irvine Usprech NorthYork	Called: January 17, 1935 Died: November 8, 1998

Lynn Carol Gilbank Burlington	Called: February 9, 1996 Died: November 16, 1998
Peter John McDerby Cornwall	Called: March 23, 1973 Died: November 19, 1998
George Vano Toronto	Called: June 19, 1952 Died: November 24, 1998
Gerald Potasky Toronto	Called: March 21, 1969 Died: November 25, 1998
Simon Richard Davey Toronto	Called: March 22, 1991 Died: November 27, 1998
John Lawrence Ringer Toronto	Called: April 5, 1979 Died: November 30, 1998
Elizabeth Shaughnessy Murray Cohen Ottawa	Called: April 11, 1979 Died: December 8, 1998
Stephen Zahumeny North York	Called: June 25, 1953 Died: December 13, 1998
Arnold Sholam Fradkin Nepean	Called: March 22, 1974 Died: January 2, 1999

C.2.2. (b) Permission to Resign

C.2.3. The following members were permitted to resign their membership in the Society and their names have been removed from the rolls and records of the Society:

James Allan Millard North York	Called: Permitted to Resign:	April 7, 1982 November 26, 1998
Joseph Maciel Amorim Portugal	Called: Permitted to Resign:	April 6, 1983 November 26, 1998

C.2.4. (c) Disbarments

C.2.5. The following member was disbarred from the Society and his name has been removed from the rolls and records of the Society:

Giuseppe Zito Sudbury	Called: Disbarred:	March 25, 1977 November 26, 1998

C.2.6. (d) Membership in Abeyance

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

Sharman Mary Louise Sharkey Bondy Essex	Called: May 9, 1979 Appointed to Ontario Court of Justice (Provincial Division) October 19, 1998
Anne-Elisabeth McFadyen Sarnia	Called: April 20, 1988 Appointed to the Ontario Court of Justice (Provincial Division) October 26, 1998
Gary Francis Hearn Kitchener	Called: March 23, 1973 Appointed to the Ontario Court of Justice (Provincial Division) November 6, 1998
Robert Anthony Beccarea London	Called: March 24, 1972 Appointed to the Ontario Municipal Board
William George Beatty Gravenhurst	Called: March 29, 1977 Appointed to the Ontario Court of Justice (Provincial Division) November 23, 1998
Alan Clive Royston Whitten Ancaster	Called: March 22, 1974 Appointed to the Ontario Court of Justice (General Division) November 24, 1998
Harriet Esther Sachs Toronto	Called: April 9, 1976 Appointed to the Ontario Court of Justice (General Division) November 24, 1998
Penny Lorraine Wyger Uxbridge	Called: April 7, 1983 Appointed to the Ontario Municipal Board November 25, 1998
Carol Ann Albert Toronto	Called: April 6, 1982 Appointed as Case Management Master of the Ontario Court of Justice (General Division) November 30, 1998

Joan Myra Haberman Toronto	Called: April 6, 1982 Appointed as Case Management Master of the Ontario Court of Justice (General Division) November 30, 1998
Calum Urquhart Campbell MacLeod Toronto	Called: April 7, 1983 Appointed as Case Management Master of the Ontario Court of Justice (General Division) November 30, 1998

ALL OF WHICH is respectfully submitted

DATED this the 22nd day of January, 1999

REPORT OF THE ACTING DIRECTOR OF EDUCATION

22ND JANUARY, 1999

ADDENDUM

B.
ADMINISTRATION

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

B.1.1. (a) Transfer from another Province - Section 4

B.1.2. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, January 22nd, 1999:

Luc André Bourque	Province of Quebec
Brian Michael Monrad	Province of British Columbia

B.2. REINSTATEMENT FOLLOWING SUSPENSION

B.2.1. The following suspended member applies to be reinstated upon payment of all arrears of fees:

B.2.2. Shael Bryan Eisen — Called: April 10th, 1981; Suspended: February 23rd, 1989 (Non-payment of Annual Fee)

B.3. MEMBERSHIP RESTORED

B.3.1. The following members have given notice that they ceased to hold judicial office and ask to be restored to the Rolls of the Law Society pursuant to Section 31(2) of the Law Society Act:

	Effective date
*Donald Robert Steele Ontario Court of Justice (General Division)	January 1, 1998
*Milton Alexander Cadsby Ontario Court of Justice (Provincial Division)	January 14, 1999
*John Brunton Webber Ontario Court of Justice	January 1, 1999

*See also Membership under Rule 50

B.4. MEMBERSHIP UNDER RULE 50

B.4.1. (a) Retired Members

B.4.2. The following members are at least sixty-five years of age and fully retired from the practice of law, and request permission, under Rule 50 made under the Law Society Act, to continue their memberships in the Society without payment of annual fees:

Allan Leslie Beattie	Toronto
Harvey John Bliss	Toronto
*Milton Alexander Cadsby	Toronto
Bernard Camille Guertin	Aylmer
Douglas Nethercot Macklem	Etobicoke
James Roy Mahoney	Willowdale
*Donald Robert Steele	Toronto
*John Brunton Webber	Brampton

* See also Membership Restored

B.4.3. (b) Incapacitated Members

B.4.4. The following member is incapacitated and unable to practise law and requests permission to continue his membership in the Society without payment of annual fees:

Joseph Conrad Barrows	Leamington, ON

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

B.5.1. The following members apply for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. In all cases the annual filings are up to date. In cases where the member was engaged in the practice of Ontario law for any amount of time, the member has declared that all trust funds and clients' property for which they were responsible have been accounted for and paid over to the appropriate persons. They have further declared that all clients' matters have been completed and disposed of, or arrangements made to the clients' satisfaction to have their papers returned to them, or have been turned over to another lawyer. The Complaints, Audit and Staff Trustees departments all report that there are no outstanding matters with these members that should prevent them from resigning. These members have requested that they be relieved of publication in the Ontario Reports:

(1) Joel Ian Katz of Winnipeg, Manitoba was called to the Bar on April 24, 1992 and has not engaged in the practise of Ontario law since July 31, 1998.

(2) Siegfried Reinhold Max Quickert of Agincourt, Ontario was called to the Bar on March 26, 1965 and has not engaged in the practise of Ontario law since January 31, 1978.

THE REPORT AND ADDENDUM WERE ADOPTED

MOTION - APPOINTMENT

It was moved by Mr. Ruby, seconded by Mr. Topp that, pursuant to Rule 28 of the Rules made under subsection 62(1) of the Law Society Act and on the recommendation of the Treasurer, Stephen Bindman of Ottawa be appointed to the Lawyers Fund for Client Compensation Committee and Review Sub-Committee for a term of one year and that he be eligible for succeeding one year re-appointments.

Carried

Legal Aid Committee

Meeting of January 13th, 1999

Mr. Armstrong presented the Report of the Legal Aid Committee and in addition provided a status report on the work of the Transition Board whose members are as follows: The Honourable Sidney Linden (Chair), Sylvia Maracle, Gordon Wolfe, Derry Millar and Robert Armstrong.

Legal Aid Committee
January 13, 1999

Report to Convocation

Nature of Report: Information

TABLE OF CONTENTS

The Legal Aid Committee met on January 13, 1999. In attendance were:

Committee members: Bob Armstrong (Chair), Tamara Stomp, Rich Wilson,Tom Carey, Derry Millar, Marshall Crowe, Elvio DelZotto, Abe Feinstein and Gerry Swaye.

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

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

The following items are for your information:

1. Area Committee Appointments

The Committee approved sixteen new appointments to area committees as recommended by the Provincial Director:

Peterborough:	Steve Harrison
	Mary Thomas
Toronto:	Timothy Breen
	Carole Dahan
	Robert Néron
	Brigitte Raney
	Paul Slansky
Etobicoke:	Lisa Bernstein
	Melanie Sager
	J. Byron Thomas
North York:	Esme Lall
	Elizabeth Nadeau
	William Reid
	Michael Simrod
	Michael Tulloch
	Lorraine Watson

Pilot Project Progress Report

An update on the pilot projects is attached.

Financial Reports - November 1998

The financial reports for November 1998 are attached.

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

(1) Copy of the Pilot Project Progress Report dated December 15, 1998.

(2) Copy of the Ontario legal Aid Plan Financial Reports November 1998

THE REPORT WAS ADOPTED

MOTION - ELECTION OF BENCHER

It was moved by Mr. MacKenzie, seconded by Mr. Murphy that Jennifer E. Keenan be elected a Bencher to fill the vacancy resulting from the appointment to the Bench of Madam Justice Harriet Sachs.

Carried

Report of the Admissions & Equity Committee

Ms. Backhouse presented the Report of the Admissions & Equity Committee.

Admissions & Equity Committee
January 22, 1999

Report to Convocation

Purpose of Report: Decision and Information

TABLE OF CONTENTS

A. POLICY

EFFECTIVE DATE OF RETIREMENT

1. Rule 50, made under subsection 62 (1) of the Law Society Act, (1990) entitled RETIRED AND INCAPACITATED MEMBERS (See Appendix A) states that any member who is over 65 years old and is permanently retired from practice or is permanently disabled, may apply to continue membership in the Society without payment of the annual fee.

2. The Finance Department sought clarification of the Committee on the effective date of retirement in order to determine when membership fees or portions of it, accrue. It was not clear what date should be considered the start of retirement under the provisions of Rule 50: the last day of practice a member declares (and he/she was 65 years of age), the date the member fully and properly filed a Permission To Retire Under Rule 50 application form or, the date Convocation approves the application?

3. Usually there are intervening months between each step of this process: from ceasing practice, applying and obtaining permission to retire. Members wishing to retire must be current with their filing of trust money (PPR) and declare if the member continues to hold trust money into retirement. Therefore, the cessation of practice may, in fact, take some time before it actually occurs and the member is ready to file an application form.

4. The current practice is that fees accrue until such date that Convocation approves the application, which can represent a delay for the member. On the other hand, if fees were refunded as of the date the member declares cessation of practice, there would be a loss of revenue to the Law Society. In 1998, this loss would have amounted to $45,269.66.

Request to Convocation:

5. Convocation is requested to adopt the following non-retroactive policy for recognizing member retirement date according to Rule 50: for the purposes of fee abatement, the date of retirement will be the date a member files a full and properly completed retirement form which includes a final report on trust money (PPR) and any trust money the member continues to hold into retirement.

6. Convocation is requested to direct that full information on the required steps and conditions for applying for retirement be adequately publicised for the benefit of the members.

INTERPRETATION OF RULE 50

7. RULE 50 made under Section 62 (1), subsection entitled RETIRED AND INCAPACITATED MEMBERS, states that any member who is 65 years of age and is permanently retired from the practice of law may apply to continue membership in the Society without payment of fees. (See Appendix A)

8. Normally, this Rule has overwhelmingly applied to members in Ontario. The Rule refers to "practice of law" and does not specify whether it means practice of law in general or specifically in Ontario, although it may have been understood as the latter.

9. The Society recieved a request from a member for retired membership statues. This member was at least 65 years of age and requested permission, under Rule 50, to continue his membership in the Society without payment of annual fees. However, the member indicated that he is semi-retired in Alberta, and although he has no Ontario files in his possession, he did mention that in 1998 he retained Ontario Counsel for legal

matters relating to Ontario Law for Alberta based clients. The Society has not dealt with requests under these circumstances before.

Request to Convocation:

10. Convocation is requested to interpret this section of Rule 50 to mean that a member is retired from the practice of law in Ontario as the Society does not have authority in jurisdictions other than Ontario.

BAC FEE SCHEDULE FOR 1999

11. A proposed fee schedule for 1999 BAC student members and transfer candidates has been elaborated. (See Appendix B). The BAC student fees reflect the 10% tuition raise approved by Convocation on November 27, 1998. The tuition for transfer candidates, unadjusted for the last six years, has been raised to appropriately represent the financial cost of taking the BAC course.

Request to Convocation:

12. A 1999 fee schedule for BAC student and transfer candidates is proposed and submitted for the approval of Convocation.

B. INFORMATION

LIFE MEMBERSHIPS

13. Rule 49 - made under subsection 62 (1) of the *Law Society Act* - entitles every member of the Society who has practised in Ontario for a continuous period of fifty years to become a life member. If there has been a period of interruption for non-payment of a fee, the Admissions and Equity Committee guidelines will determine if such a period may be counted towards the continuous period of fifty years. (See Appendix C)

14. The Admissions and Equity Committee has developed guidelines for life membership qualification (See Appendix D).

NATIONAL COMMITTEE ON ACCREDITATION

15. In June 1997, Convocation approved the recommendations of a Report prepared by Gavin MacKenzie for the Admissions and Equity Committee, entitled "*Report to the Admissions and Equity Committee of the Law Society of Upper Canada on the Accreditation of Foreign-Educated Lawyers and Quebec Lawyers with Non-Common Law Legal Education*" (MacKenzie Report).(See Appendix E)

16. The MacKenzie Report was reviewed by the NAC and its response is included in the *"Review of the Accreditation Process Conducted by the National Committee on Accreditation"* which was approved by the Federation of Law Societies on August 28, 1998. (See Appendix E).

17. The issue of the composition of the NAC highlighted one difference between the recommendations of MacKenzie Report and the NAC response. Whilst the MacKenzie Report recommended that there be a representative for foreign-educated lawyers, the NAC opted instead to include a member who is a non-lawyer and a current or former lay bencher of one of the Law Societies.

ADJUDICATED PASS

18. This year the Department of Education, in line with many educational institutions, has taken an overview of a student's overall progress and adjusted marginal failures that appear out-of-line with the rest of the student's achievement. The Department of Education has applied this concept by means of an aegrotat standing calculation.

19. If a student has passed all but one or two examinations, and if the combined percentage under the passing standard is no more than 10%, then a pass is granted in those one or two examinations. Students writing 8 examinations must thus be under the passing score by no more than 10% points in the aggregate. (See Appendix F)

20. As well, the Department of Education is developing two appeal processes: one for appealing the marking of individual exams and one which will apply in limited circumstances to ensure that competent and qualified students are not excluded from the legal profession.

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

(1) Copy of Rule 50, made under subsection 62(1) of the Law Society Act, (1990) entitled Retired and Incapacitated Members. (Appendix A)

(2) Copy of the proposed fee schedule for 1999 BAC student members and transfer candidates. (Appendix B)

(3) Rule 49, made under subsection 62(1) of the Law Society Act re: Life Members. (Appendix C)

(4) Copy of Propsed Guidelines for Determination of Life Membership Eligibility. (Appendix D)

(5) Copy of the Report to the Admissions and Equity Committee of the Law Society of Upper Canada on the Accreditation of Foreign-Educated Lawyers and Quebec Lawyers with Non-Common Law Legal Education prepared by Mr. Gavin MacKenzie. (Appendix E)

(6) Copy of the response by the NAC . (Appendix E)

(7) Copy of a paper entitled Adjudicated Pass. (Appendix F)

Re: Effective Date of Retirement

It was moved by Ms. Backhouse, seconded by Mr. Carter that for the purposes of fee abatement, the date of retirement be the date a member files a full and properly completed retirement form which includes a final report on trust money (PPR) and any trust money the member continues to hold into retirement and that this policy be adequately publicised for the benefit of the members.

Carried

Interpretation of Rule 50

It was moved by Ms. Backhouse, seconded by Mr. Carter that Rule 50 made under Section 62(1) be interpreted to mean that a member is retired from the practice of law in Ontario as the Society does not have authority in jurisdictions other than Ontario.

Carried

BAC Fee Schedule for 1999

It was moved by Ms. Backhouse, seconded by Mr. Carter that the 1999 fee schedule for BAC student and transfer candidates as set out in Appendix B of the Report be approved.

Carried

THE REPORT WAS ADOPTED

Treasurer's Equity Advisory Group - Terms of Reference

Ms. Backhouse presented the terms of reference of the Treasurer's Equity Advisory Group for Convocation's approval.

January 11, 1999

Terms of Reference
Treasurer's Equity Advisory Group

Introduction:

1. At the January 6, 1999 meeting of the Treasurer's Equity Advisory Group (TEAG), a draft proposal for Terms of Reference was submitted for consideration by Ms. Avvy Go and Ms. Nora Angeles. Following discussion, the terms of reference were adopted and put forward for consideration by Convocation.

2. The terms of reference for the TEAG provides for a formalization of the Group in Convocation's decision-making processes. Reporting to the Admissions and Equity Committee and to the Treasurer, TEAG will deal with equity and diversity issues pertinent to access to the legal profession for equity-seeking groups. This has been the purpose of TEAG since its inception over a year ago. The terms of reference merely formalize this relationship.

3. Also of significance is that the membership for TEAG will be no less than 15 and no more than 17 with no less than 5 benchers and 10 non-benchers. TEAG shall have two co-chairs who will be appointed by the Treasurer. Representatives from equity-seeking organizations concerned about equity and diversity in the legal profession will be invited to participate at TEAG meetings and will receive the agenda for each meeting.

4. Upon approval of the report, the following will be done:

a) the establishment of TEAG shall be incorporated into Convocation's bylaws;
b) the Equity Advisor will submit selection criteria and selection processes for decision-making by the Treasurer's Equity Advisory Group;
c) a recruitment process will be implemented to select the non-bencher representatives;
d) contacts with equity-seeking organizations concerned about equity and diversity in the legal profession will be established.

Terms of Reference
For Treasurer's Equity Advisory Group

1. Name: Treasurer's Equity Advisory Group (TEAG)

2. Purpose: To advise and assist the Treasurer of the Law Society of Upper Canada (the "Law Society"), the Law Society's departments and staff, on all equity issues which fall within the mandate of the Law Society, including issues affecting equity seeking groups in the legal profession.

3. Responsibilities:

3.1 Identify, review and report on issues affecting the equity seeking groups within and their access to the legal profession.

3.2 Participate in planning, developing, and designing Law Society's policies and practices on equity issues.

3.3 Assist the Law Society, its Treasurer, departments and staff in establishing relations with equity seeking individuals, groups and organizations.

3.4 Assist the Law Society, its Treasurer, Convocation, departments and staff to improve their internal equity practices in various operational aspects of the Law Society including hiring, promotion and contract compliance.

3.5 Monitor, review and comment on the development of various policies, plans and other initiatives by the Law Society and its departments to promote equity and access to the legal profession.

4. Reporting Relationship and Structure:

4.1 The TEAG will report and make recommendations to the Admissions and Equity Committee as well as the Treasurer of the Law Society.

4.2 The Treasurer will have the authority to act on behalf of TEAG to directly place matters raised by TEAG on the agenda of Convocation or to act in a manner befitting the Treasurer and in accordance with Convocation's policies on equity and diversity.

5. Membership:

5.1 The TEAG is composed of no less than 15 members and no more than 17 members with no less than 5 benchers and no more than 11 non-benchers appointed. Members must have direct experience in or commitment to access and equity for equity seeking communities, including but limited to communities of ethno-racial people, Aboriginal peoples, people of colour, immigrants and refugees, people with disability, gays, lesbians, bisexuals, transgenders, women.

5.2 At all times, TEAG membership must strive to maintain gender parity and balance among various equity seeking communities.

5.3 The TEAG will have two co-chairs designated by the Treasurer of the Law Society. One of the two co-chairs shall be a bencher.

5.4 TEAG members must have demonstrated experience in promoting and improving access of equity seeking groups in the areas of:

- employment equity;
- access to the legal system;
- human rights issues;
- anti-racism, anti-oppression training;
- managing access and equity plans;
- social justice issues;

5.5 TEAG members must be able and willing to attend TEAG meetings. Members are expected to read all circulated materials and participate actively in the work of the TEAG.

5.6 TEAG members who cannot attend meetings in person must be given the opportunity to attend by way of teleconference.

5.7 Members missing more than three meetings in succession without calling regrets are considered as having resigned from the TEAG and the TEAG should take action to replace such members.

6. Frequency of Meetings:

6.1 The TEAG meetings once a month.

6.2 Special meetings of the TEAG may be called by a co-chair.

6.3 The meeting schedule and agenda for TEAG will be established by the co-chair with input from other members.

7.0 Quorum:

7.1 Four members shall constitute quorum for any meeting.

8.0 Term of Office:

8.1 The term of office shall be two years.

8.2 A member may serve a maximum of two consecutive terms.

8.3 In order to maintain a degree of continuity, not more than half the membership shall be changed each year.

9.0 Staff Support:

9.1 Research and administrative support will be provided by the Law Society's Equity Advisor.

It was moved by Ms. Backhouse, seconded by Mr. Banack that the terms of reference of the Treasurer's Equity Advisory Group established to deal with equity and diversity issues pertinent to access to the legal profession for equity-seeking groups be adopted.

Carried

Equity and Diversity Public Education Events in 1999

It was moved by Ms. Backhouse, seconded by Mr. Banack that a program of Equity and Diversity Public Education Events for 1999 be approved subject to budgetary considerations.

Carried

January 12, 1999

Equity and Diversity Public Education Events in 1999

The following report, prepared by the Equity Advisor, has been adopted by the Treasurer's Equity Advisory Group at its January 6, 1999 meeting.

The Equity Advisor will be coordinating such events in 1999 and is recommending that these be sponsored by the Law Society and that Treasurer and/or Chair of the Treasurer's Equity Advisory Group participate in these events to offer greetings on behalf of the Law Society.

Planning for several of the proposed events are already underway notably events for Black History Month and International Women's Day where Black and women members of the profession will speak to diverse high school students about pursuing law as a career. Other events will have a similar focus or will address issues relating to access to the legal profession by members of equity-seeking communities.

These events will be held subject to budgetary considerations.

December 10, 1998

LSUC EQUITY AND DIVERSITY PUBLIC EDUCATION EVENTS FOR 1999

INTRODUCTION:

1. I am seeking endorsement by the Treasurer's Equity Advisory Group for the convening of Equity and Diversity Public Education Events in 1999 and on an ongoing basis by the Law Society of Upper Canada.

2. I am now working on events to celebrate or commemorate the following days of significance and wish to do so with leadership provided by Convocation through the Treasurer and the Treasurer's Equity Advisory Group: Black History Month (February), International Women's Day (March 8), International Day for the Elimination of All Forms of Racial Discrimination (March 21), Refugee Rights Day (April 4), Holocaust Education Week, Law Day, National Access Awareness Week for People with Disabilities (May), Aboriginal Heritage Day (June 21), Lesbian/Gay Pride Week (June), United Nations Human Rights Awareness Day (December 10).

3. For each of the days identified above, LSUC will convene or sponsor an event to celebrate or commemorate the particular issue of equality and social justice which has significance to diverse equity-seeking communities and to all communities. While 1999 is a start, LSUC should convene such events as public education activities on an ongoing basis, particularly regarding access and equity in the legal profession. To do this, partnerships with appropriate equity and advocacy groups within the legal profession and the broader community should be formed and effort is already underway to do so for 1999.

4. By hosting these events, the LSUC will be actively promoting partnerships between diverse communities within the legal profession and increasing access by equity-seeking communities to the affairs of the LSUC. In this context, it is extremely important for Convocation through the Treasurer and the Treasurer's Equity Group to provide leadership for these events.

Background:

5. Over the years, celebrations and commemorations of these days have been important to diverse equity-seeking communities and to communities at large. For example, the Federal Government has declared February as Black History Month, the third week of May as National Access Awareness Week and June 21 as National Aboriginal Heritage Day. International Women's Day has been celebrated around the world since its inception while the International Day for the Elimination of All Forms of Racial Discrimination has been commemorated in Canada since early in the 1980's and has been part of the Federal Government's program aimed at eliminating racism in Canada.

6. Governments, communities and large public and private sector institutions such as the Canadian Human Rights Commission, Urban Alliance on Race Relations, Women Working With Immigrant Women, the Canadian Jewish Congress, the Royal Bank, Bank of Montreal, the Federation of Canadian Municipalities, the League for Human Rights, B'nai Brith Canada, local municipal governments and school boards have marked these days with public education events promoting the goals of access, equity and social justice for all.

7. Other than marking significant dates in the progress of equality rights locally, nationally and internationally, these events have served as bridges between institutions and equity-seeking communities. In this context, such events have enabled organizations to increase participation by equity-seeking communities in their day-to-day activities, thereby, increasing opportunities for development and implementation of equity initiatives within the institution and enabling the institution to understand and take action on equity and social justice issues in the public domain.

8. Given the LSUC commitment to equity implementation, such events must be nurtured and developed as they will provide opportunities for increased dialogue between the LSUC, equity-seeking communities and members of the legal profession on social justice and equality issues.

Implementation:

9. As Equity Advisor, I will take responsibility for implementation of events held to mark the forenamed days of significance. Implementation will provide opportunities for the LSUC through the Treasurer and the Treasurer's Equity Advisory Group to take leadership in hosting these events and working with appropriate partners within the legal and equity-seeking communities.

10. In terms of community and institutional partners, I will recommend to the Treasurer's Equity Advisory Group the potential for partnerships in hosting these events. Partnerships are important in that they will enable the LSUC to work with others who are already actively addressing these issues and this will promote dialogue on common issues between the LSUC and the proposed partners.

Conclusion:

11. It is anticipated that 1999 will be the first year for the LSUC to consistently celebrate and commemorate significant days marking social justice and equity issues. I recommend that the LSUC convene events each year to mark these days as well as Martinsday (a date in January to honour the life of the American Civil Rights Activist Dr. Martin Luther King).

12. The convening of events to mark these dates will enable the LSUC to build bridges with equity-seeking communities and assist in promoting access and equity in the legal profession. They will also provide opportunities for developing joint initiatives on other broader social justice and equity issues.

Report of the Professional Development & Competence Committee

Meeting of January 7th, 1999

Re: County Libraries - 1999 Library Levy Distribution

Professional Development & Competence Committee
January 22, 1999

Report to Convocation

Purpose of Report: Information

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on January 7, 1999. Committee members in attendance were Mary Eberts (Chair), Larry Banack (Vice-Chair), Rich Wilson (Vice-Chair), Bob Aaron, Mike Adams, Kim Carpenter-Gunn, Ron Cass, Susan Elliott, Helene Puccini, and David Scott. Staff in attendance were Sue McCaffrey, Scott Kerr, Gord Lalonde, Janine Miller, Felecia Smith, Elliott Spears, Paul Truster, Wendy Tysall, and Sophia Sperdakos.

2. The Committee is reporting on the following matters:
(Information)
   - County Libraries - 1999 Library Levy Distribution
   - Implementation Issues - The *Law Society Amendment Act, 1998*
   - A report from the November 1998 meeting of the Certification Working group on new applications and recertifications as certified specialists (approved in Committee in January 1999).

Information

COUNTY LIBRARIES - 1999 LIBRARY LEVY DISTRIBUTION

Background

1. On November 27, 1998 Convocation approved an increase in the levy from $116 to $200. Convocation did not impose any terms upon which the additional funding was to be allocated. It voted the increase without any indication of the specific use, if any, to which the money was to be put.

2. The $200 library levy can be said to consist of three parts: the 1998 levy of $116; approximately $5 representing additional grants to counties pursuant to s.31 of regulation 708; and $79 of additional funding. It was estimated in the Libraries Working Group's Phase I report *Beyond 2000: The Future Delivery of County Library Services to Ontario Lawyers* that an additional $79 per member would eliminate the need for local library dues.

3. Because of the size of the increase it was considered appropriate for the Professional Development and Competence Committee to determine the following issues:

   (i) What proportion of the money should be allocated in 1999?
   (ii) Should there be conditions imposed upon the allocation of the funds?
   (iii) On what formula should the allocation be based?

4. The Libraries Working Group (the "working group") was not established to consider the type of operational issue raised by Convocation's decision on the library levy. Because, however, the working group is in the process of developing the model for the new library system approved by Convocation in September 1998, and because the working group has among its members representatives of the CDLPA Library committee, the CDLPA executive, MTLA, a librarian from the county libraries, benchers, and the Law Society's Director of Libraries, it was felt that it could provide information and options to assist the Professional Development and Competence Committee in its determination of the allocation of 1999 library levy. The working group presented an options paper to the Committee on January 7, 1999.

Consideration of the Issue

5. In its Phase I report on the future delivery of library services to counties the working group identified a number of long-term funding issues including:

   a) Should all members of the Law Society pay for the County Libraries?
   b) How much, if anything, should local associations contribute to funding?

6. It is clear from both the working group's Phase I report and from the Topp Report, written in 1995, that the issue of " central funding"[1] and the issue of the abolition of local fees must be addressed in any long term redesign of the county library system.

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[1]The issue of central funding is inevitably accompanied by a discussion of universal access to all libraries by all members of the LSUC.

7. The Committee was in agreement that the increase in the library levy, which Convocation approved for the 1999 budget, must be considered in light of the in-depth analysis that is being undertaken by the working group. This is necessary so that a decision is not made now that may have a negative impact on the development of a library system, which Convocation will consider in March or April 1999.

8. In making its determination the Committee agreed with the following principles/assumptions identified by the working group:

a) for 1999 the $116 and the $5 portions of the levy will be allocated in exactly the same way as was done in 1998.

b) In view of (a), the issue the Committee must determine concerns the allocation of the $79 portion of the levy.

c) The issue is being determined for 1999 only. Any decision made should not be seen as creating a precedent that will impede the design of the new library system or result in *de facto* financial decisions being made for the long term.

d) Because the issue is being determined for 1999 only, nothing in the allocation of the funds should necessitate a change in the administrative structure of the libraries. Rather it should be clear that the existing structure is being funded differently *for 1999*.

e) Any decision with respect to the allocation of funding should keep in mind the impact of any Ontario Law Foundation decision concerning library grants. The Law Society has requested $850,000 from the Ontario Law Foundation for funding county libraries in 1999.

f) It is not a realistic option to distribute none of the money and retain it for use in implementing the new system. It should be assumed that based upon the way in which the request for an increase was put to Convocation it was intended that the money be put to use for the libraries in 1999.

g) The decision should be based on the simplest approach possible for a number of reasons. First, it is important that the issue be dealt with expeditiously because counties must send out their fees notices to members in January. Second, any complicated system for distribution lends itself to the interpretation that the process is being redesigned. This would pre-empt the process being undertaken by the working group in Phase II.

h) The impact of section 28 of Regulation 708 must be considered in any allocation of the funds. Section 28 reads as follows:

> At least one-half of the fees received by an association from its members and the whole of the aid at any time granted to an association by the Society shall be applied in the purchase, binding and repairing of books for its library and in paying for telephone service and the salary of its librarian.

The Committee's Decision

9. The Committee was presented with a number of options. The Committee approved the following course of action:

a) Relying upon the view that the additional levy was intended to replace local library fees, the Law Society will distribute to each county library the amount of money representing the 1999 budgeted library fee portion of the association fees and retain any excess for emergencies and/or the implementation of the new system.[2]

b) In distributing the money to the counties, the Law Society will not impose any conditions, but the Director of Libraries will correspond with the counties to:

i) advise that the funding allocation for 1999 should not be seen as setting any future precedent. This year is a transitional year until the new system approved by Convocation can be fully developed and approved;

ii) explain the method by which the money is being allocated and the reasons underlying that allocation and encourage the county law associations to use the additional funding to eliminate, or substantially reduce, the library portion of their association fees;

iii) remind the counties that section 28 of Regulation 708 continues in force and requires that at least one-half of the fees received by an association from its members be applied to libraries;

iv) advise the counties that the Law Society has not yet heard from the Law Foundation of Ontario with respect to its grant application and that the impact of any reduction in the grant will have to be considered once the amount of the grant is known;

v) encourage the counties to open their libraries to all Law Society members and not just those who are members of the association. This is reflective of the reduction or elimination of the library fee portion of the association dues; and

vi) remind the counties of the need to provide information to the Director of Libraries on the uses to which the funds are put and to track information such as usage of libraries. This information and other information on such things as increased membership in law associations will be helpful as a new library system is developed and implemented.

IMPLEMENTATION ISSUES - THE *LAW SOCIETY AMENDMENT ACT, 1998*

1. The Committee is undertaking policy work related to the implementation of the competence-related provisions of the *Law Society Amendment Act, 1998* in particular sections 36, 41-45, 49.1, 49.4 - 49.13 and section 62(0.1)11.

2. In particular the committee will provide policy input to assist in the development of the by-laws required to implement the competence scheme and the requalification scheme and to provide for the development of guidelines for professional competence.

3. In the coming months the Committee will provide policy options to Convocation for the implementation of these provisions.

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[2]It is estimated that of the approximately $1,919,700 to be collected from the additional $79 per member, all but approximately $80,000 will be distributed.

INFORMATION REPORT ON SPECIALIST CERTIFICATION NEW APPLICATIONS AND RECERTIFICATIONS APPROVED BY THE CERTIFICATION WORKING GROUP IN NOVEMBER 1998 (APPROVED IN COMMITTEE ON JANUARY 7, 1999)

1. In November 1998 the Certification Working Group approved the following policy changes for the Specialist Certification Program:

    1. At the suggestion of the Intellectual Property Law Specialty Committee, a change has been made to the current Standards for Certification with respect to the requirement in paragraph 21 of a minimum of four replies from references. This has been changed to a minimum of three replies from references.

    2. At the suggestion of the Workers' Compensation Law Specialty Committee, a change has been made to the specialty designation of this area and to any program materials that make reference to workers' compensation law as a result of the *Workers' Compensation Act* being repealed and replaced with the *Workplace Safety and Insurance Act.* A lawyer certified in this area will now be referred to as a "Workplace Safety & Insurance Law Specialist".

2. The Certification Working Group of the Professional Development and Competence Committee is pleased to report final approval, in November 1998, of the following lawyers for certification:

Civil Litigation:	Peter B. Annis (of Ottawa) Elizabeth Cummins Seto (of Hamilton) Barry Laushway (of Prescott) Gordon McKee (of Toronto) Edvins Upenieks (of Toronto) David Zuber (of Toronto)
Criminal Law:	Lorne Sabsay (of Toronto)
Family Law:	Douglas Manning (of Barrie)
Intellectual Property Law:	Timothy Sinnott (of Toronto)
Labour Law:	Brett Christen (of Toronto) James Hassell (of Toronto) James Noonan (of Toronto)

3. The Certification Working Group of the Professional Development and Competence Committee is pleased to report final approval of the following lawyers, in November 1998, for recertification for an additional five years:

Civil Litigation:	Rino Bragagnolo (of Timmins) David Bristow (of Toronto) Edward Conroy (of Sudbury) Garret Cooligan (of Ottawa) Lyle Curran (of Sarnia) William M. Davis (of Ottawa) W. Graham Dutton (of Toronto) Stanley G. Fisher (of Toronto)

	Richard J. Hobson (of Waterloo) John F. Howard (of Toronto) Kenneth Howie (of Toronto) Rodney Hull (of Toronto) Lawrence Mandel (of Toronto) Ben Marcus (of Ottawa) Michael Mollison (of Kitchener) Edward Orzel (of Hamilton) Claude Pensa (of London) Barry Percival (of Toronto) Theodore Rachlin (of Toronto) Kenneth Radnoff (of Ottawa) Bert Raphael (of Toronto) D. Grant Scheifele (of Meaford) Robert G. Schipper (of Toronto) William G. Scott (of Toronto) John Sigouin (of Ottawa) Gerald Swaye (of Hamilton) Claude Thomson (of Toronto) Herman Turkstra (of Hamilton) Malte Von Anrep (of St. Catharines) Joel R. Wesley (of Toronto)
Criminal Law:	B. Lee Baig (of Thunder Bay) Austin Cooper (of Toronto) Earl Levy (of Toronto) Bruce McChesney(of Newmarket)
Intellectual Property Law:	Ronald Dimock (of Toronto) Charles Kent (of Ottawa)

It was moved by Mr. Topp seconded by Mr. Robins that paragraph 9(a) on page 4 of the Report be deleted and that it be directed that incremental amounts be used specifically to update and complete the libraries' collections.

Withdrawn

Further discussion of the Report was stood down to await the arrival of the Chair.

CALL TO THE BAR

The candidates listed in the Report of the Acting Director of Education and the Addendum were presented to the Treasurer and called to the Bar and then presented by Mr. Lamont to Justice Gerald F. Day to sign the Rolls and take the necessary oaths.

Joseph Richard Gregoire Chatelain	Bar Admission Course
Samuele John Ramadori	Bar Admission Course
Luc A. Bourque	Transfer, Province of Nova Scotia
Brian Michael Monrad	Transfer, Province of British Columbia
Annette Pereira	Transfer, Province of Quebec

MOTIONS - SUSPENSIONS

It was moved by Mr. Krishna, seconded by Mr. MacKenzie THAT the rights and privileges of each member whose name appears on the attached list, and who has not paid the Membership Fee as of Friday, January 22nd, 1999 (5:00 p.m.), be suspended effective Monday, January 25, 1999 and until their fee is paid together with any other fee or levy owing to the Society which has been owing for four months or longer.

Carried

(see list in Convocation file)

It was moved by Mr. Krishna, seconded by Mr. MacKenzie THAT the rights and privileges of each member whose name appears on the attached list, and who has not paid the Errors and Omissions Insurance Levy as of Friday, January 22, 1999 (5:00 p.m.), be suspended effective Monday, January 25, 1999 (9:00 a.m.) and until their levy is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

Report - The Task Force on the 1999 Bencher Election and Referendum

Mr. Lamek presented the Report of the Task Force on the 1999 Bencher Election and Referendum.

Report to Convocation
January 22, 1999

The Task Force on the 1999 Bencher
Election and Referendum

Purpose of Report: Decision

REPORT OF THE 1999 BENCHER ELECTION AND REFERENDUM TASK FORCE

Table of Contents

E. The Law Society of Upper Canada, Bencher Election Rules, 1996
F. Bibliography

I. INTRODUCTION

A. REGIONAL BENCHER ELECTION

1. The Law Society of Upper Canada will hold its next bencher election in the spring of 1999. With the recent enactment of the *Law Society Amendment Act, 1998* (Bill 53), the coming election will be the first time that members of the Law Society elect regional benchers. The new provisions state:

> 15.(2) The benchers elected under subsection (1) shall be elected for regions prescribed by the by-laws.

The Law Society must therefore, prepare for an election process that will allow, in the most effective manner possible, for the election of regional benchers.

B. REFERENDUM ON BENCHER REMUNERATION

2. The coming elections may have another distinguishing characteristic - a possible referendum. On February 28, 1997, Convocation debated the question of remuneration for benchers and made the following decisions:

- The benchers voted 22 to 21 in favour of some form of honorarium to be paid to benchers.
- The benchers also voted 32 to 12 (1 abstention) to refer the question of bencher remuneration to the members in a referendum, subject to Convocation's consideration of a committee report on how a referendum would work.

C. MANDATE OF THE 1999 BENCHER ELECTION AND REFERENDUM TASK FORCE

3. The Treasurer's Report to Convocation of June 26, 1998 outlines the terms of reference for a Task Force on Bencher Elections and Referendum (See Appendix A). This report addresses the following aspects of those terms of reference:

- to describe as clearly as possible the process for the regional bencher election and;
- to present an analysis of the characteristics, feasibility, and implications of a referendum on bencher remuneration in the 1999 bencher election.

3. The members of the Election and Referendum Task Force are the Treasurer, Susan Elliott and Paul Lamek. Staff to the Task Force are Richard Tinsley, Katherine Corrick, Gord Lalonde, Elliot Spears, Sheena Weir, Fred Grady, Sophia Sperdakos, and Maria Paez Victor.

II. REGIONAL BENCHER ELECTION

A. BACKGROUND

5. Regional representation among benchers has been considered often throughout the history of the Law Society as far back as 1870 and more recently by:

- The Special Committee on the Election of Benchers (1989), which produced the *Ferguson Report* in 1990 (See Appendix B).
- The Topp Committee (1991)
- The Special Committee on Bencher Elections (1992), which produced the *Scott Report* in 1993 (See Appendix C).

6. The driving force for regional bencher representation has been the belief that it would encourage member participation in the elections, as there has been an increasing decline in voter turnout. Voter turnout was 71% in 1979 but declined to 53% in 1991 and 43% in 1995. There has been a marked decline in female member voter turnout: in 1991, 51% of eligible female voters cast their ballots, but in 1995, only 27% of eligible female voters cast their ballot. Notwithstanding, there has been an increase in the number of female benchers elected: 10 in 1991 (25%) to 15 (37.5%) in 1995.

7. The counter arguments to regional benchers have been based on the mandate of the Law Society to govern the profession in the public interest. To this effect, it has been pointed out that the issues addressed by Convocation are not regional, but pertain to the whole province. The concern has been that regional representation may detract from the focus of the work of Convocation by bringing about the subjugation of the public interest to local or particular constituencies.

8. The *Ferguson Report* indicated that there was a certain degree of acceptance among consulted members for regional benchers. A questionnaire was sent to the membership soliciting responses to a series of questions regarding bencher elections. As a result of this consultation, the report concluded that the majority (72%) of the members who answered the questionnaire were in favour of regional representation and as well, the majority were opposed to any other kind of sectoral representation.

9. The *Ferguson Report* proposed a basic scheme for regional elections. It was based on consultation with the County and District Law Presidents' Association. The *Ferguson Report* was approved by Convocation on November 23, 1990. The scheme had several main characteristics:

   i. No increase to the number of 40 benchers: 20 from Metro Toronto and 20 from outside Toronto. Each voter would get 40 votes.

   ii. Eleven electoral regions: 7 regions outside Metro Toronto corresponding to the regions established under s. 92a of the *Courts of Justice Act, 1984, S.O. 1984, C.11,* plus 4 electoral regions in Metropolitan Toronto. (Appendix D)

   iii. One bencher elected from each of the 11 electoral regions and these regional benchers would be elected only by the voters within their regions.

   iv. The remaining 13 from outside Metropolitan Toronto and 16 from Toronto would be elected by all voters in the province, thus rejecting full regionalisation and allowing members from every region to be benchers at large.

10. The *Scott Report* (1993) was produced by the Special Committee on Bencher Elections, which was mandated to reconsider the work previously done on regional elections. The Special Committee consulted with the County and District Law Presidents' Association, the Canadian Bar Association and other professional groups and concluded that:

> Some form of regionalisation must be developed, however modest a first step, if the concerns of the profession are to be considered.

11. The *Scott Report* fully endorsed the election scheme laid out in *Ferguson Report* with only one modification: it reduced the electoral regions for Metropolitan Toronto from 4 to 2. The *Scott Report* was approved by Convocation on March 26, 1993.

B. THE FERGUSON/SCOTT REGIONAL BENCHER ELECTION SCHEME

12. The following regional bencher election scheme was proposed by both the *Ferguson* and the *Scott Reports,* endorsed in consultation initiatives with the profession, and approved by two Convocations.

a. What Are Its Characteristics?

13. The main characteristic of this regional bencher election scheme is that it will allow at the same time the election of both:

- regional benchers: the election of a bencher for each region by the members of that region; and
- benchers-at-large: the election of benchers from any region, chosen by all members, regardless of region.

14. A second characteristic of the scheme is that there will be no requirement for benchers to declare themselves as running for regional bencher or bencher-at-large, as the votes will decide these distinctions.

15. In terms of functions, responsibilities and privileges, there will be no distinction between regional benchers and benchers-at-large.

b. How Will It Operate?

16. The current election and campaign rules will apply to the regional election. (See Appendix E) The implementation framework for the regional election is as follows :

i. Electoral regions

There are nine electoral regions:

- Two for Toronto corresponding to the former City of Toronto and former Metropolitan Toronto Area, and
- Seven from outside Toronto corresponding to the seven judicial regions: North West, North East, East, Central East, Central West, Central South, South West.

ii. Ballots

The ballots for each of the nine electoral regions will be identified by a distinctive colour. All ballots will have the same format: each will list firstly, the names of all candidates from outside Toronto and secondly, those from within Toronto. The electoral district of each candidate will be specified on the form. No candidate will be identified as running specifically as a regional bencher.

iii. Votes

Each member is entitled to 40 votes and may vote for 20 candidates from within Toronto and 20 from outside Toronto. While members can only contribute toward the election of the regional bencher of their own electoral region, they are free to vote for bencher-at-large candidates from all other regions. As is customary in any election, members do not have to exercise all 40 votes, but they cannot exceed 40 and they may only vote once for any one candidate.

iv. Counting and Scrutiny

- Regional tally: Firstly, the votes are collated and counted according to region using the colour coded ballot. The candidate from each electoral region who receives the greatest number of colour-coded votes from within that electoral region will be declared the regional bencher.

- Province-wide tally: Secondly, all votes will be collected together and counted with no distinction of colour. The regional winners are eliminated leaving 18 Toronto candidates and 13 candidates from outside Toronto. The candidates who have the greatest number of votes cast from voters in the entire province will be declared elected.

C. REGIONAL BENCHER VACANCY

17. Currently, a vacancy in Convocation is filled by the defeated candidate at the last election who received the greatest number of votes. A vacancy created by the departure of a bencher from within Toronto is filled by a defeated candidate from within Toronto. A vacancy created by the departure of a bencher from outside of Toronto is filled by a defeated candidate from outside of Toronto. If there are no defeated candidates, Convocation fills the vacancy by electing a member of the profession. With the proclamation of the *Law Society Amendment Act (1998)*, vacancies in the office of regional bencher must be addressed.

18. The *Scott Report* did not address the issue of regional bencher vacancies. The *Ferguson Report* recommended that a regional bencher vacancy be filled by a person from the same region. The *Ferguson Report's* recommendation was not entirely consistent with the scheme of regional representation because it suggested that the person elected to fill a regional vacancy would be a person elected at large, not only by the voters in that region. This suggestion was made because the committee felt that Convocation did not have the power to provide that the person elected to fill a regional vacancy could only be elected by members in that region without an amendment to the *Law Society Act.*

19. Once Convocation decided to seek amendments to the *Law Society Act*, the Legislation and Rules Committee drafted amendments that fully implemented the scheme of regional representation as set out in the *Ferguson* and *Scott Reports.* The committee proposed a method of filling regional bencher vacancies that maintained regional representation. On January 29, 1994, Convocation approved the following means of filling a regional bencher vacancy:

> Upon a regional bencher vacancy, Convocation shall elect as a bencher the defeated candidate from that electoral region who received the greatest number of votes from electors of that region. If there are no such defeated candidates, Convocation shall elect as a bencher a member from that region.

D. HOW MUCH WILL THE REGIONAL BENCHER ELECTION COST?

20. The cost of the 1995 bencher election totalled $91,343. The bulk of this cost (approximately $68,760) related to the development and printing of election information books and related election materials and ballots. The next largest expense was for postage and distribution (approximately $12,150). Since the election of 1995, the Law Society has budgeted $50,000 annually to fund the 1999 election - a total of $200,000. This amount has been provided on the assumption that the cost of elections under the new *Law Society Act* would significantly increase with the provisions for regional benchers and the added costs of providing for a possible referendum on bencher remuneration.

21. The additional costs are expected due to:

- the printing of colour coded ballots
- more personnel hours due to the double tally of votes.

E. WHAT STEPS NEED TO BE TAKEN FOR THE REGIONAL BENCHER ELECTION?

22. The *Law Society Amendment Act, 1998 (Bill 53)* has been enacted by the Legislature.

23. Nominations for benchers must be received by February 26, 1999. An Election Coordination Team will be assigned to ensure there is an effective and efficient election process.

24. A staff Election Coordinator will be responsible for coordinating notices to the profession, candidate materials and packages and member balloting packages, oversee ballot security and coordinate other department functions relevant to the election. Some further specific tasks that have to be carried out for the regional election include:

- updating of member mailing addresses
- printing of coloured ballots
- organizing personnel for colour-coded counts.

F. RECOMMENDATION OF THE TASK FORCE

25. With respect to the regional bencher election, it is the unanimous recommendation of the Task Force that in view of:

- the consultation processes already carried out by the committees that produced the Ferguson Report and the Scott Report,
- the agreement of the Canadian Bar Association and the County and District Law Presidents' Association with the scheme, and
- the approval of the scheme by two prior Convocations, that the original Ferguson/Scott regional bencher election scheme, including the method of filling a regional bencher vacancy referred to in paragraph #19, proceed as approved and be reassessed following the 1999 election.

III. REFERENDUM

A. WHAT IS A REFERENDUM?

26. A referendum is a political process whereby all eligible voters in a jurisdiction are asked to vote for or against a proposed policy or legislation. The wording is in the form of a question that voters are asked to answer with a yes or no. Referenda can be binding or advisory. Although they are considered exercises in direct democracy, referenda are not common events in parliamentary democracies.

27. There are two main types of referenda depending on who initiates the process. Plebiscites, popular referenda or initiatives are initiated by voters and are generally not binding on the government without subsequent legislative ratification. Referenda proper are initiated by the legislature or a municipality seeking approval of the electors for a proposed measure or policy and are generally binding.

28. Organizations or associations whose governing cadre receives authority directly from its members, rather than from legislation, tend to use referenda more than those that have legislative authority to govern a membership, such as professional organizations. Referenda are customarily conducted under provisions that define beforehand whether the results are binding or advisory to the governing body of the organization.

B. DOES THE LAW SOCIETY HAVE THE AUTHORITY TO CONDUCT A REFERENDUM?

a. Procedures Needed

29. Generally speaking, organizations that use referenda have the important legal and procedural considerations that govern the process explicitly set out. The Law Society's legislation does not have a referendum provision and as such, a number of issues must be considered:

(1) Who can call for a referendum?

In the present case, the benchers are initiating a referendum by a decision of Convocation. In the Task Force's opinion, Convocation does not have the authority to conduct a binding referendum. Nor, in the Task Force's view, can a member, any number of members, or a motion made at the Annual General Meeting, call for a binding referendum.

(2) How many votes are needed?

It will be necessary to establish how large a majority is needed for a motion to be accepted: 50% of the membership, two-thirds of the voters or a simple majority of the voters.

(3) What issues may be subjects of referenda?

It will be necessary to establish if there are certain kinds of issues that must be submitted to member ratification. For example, at the Law Society of British Columbia, a referendum must be called for the removal of the President or Vice-President and for a change in the electoral districts. In contrast, other law societies do not restrict the issues that can be submitted to a referendum.

(4) Is the result of referendum binding or advisory?

Once a referendum has been called it will be necessary to articulate clearly beforehand whether Convocation will be bound by the results. What circumstances would justify the disregard of voters' wishes? If the result is only advisory, the expense and the possible impact of a referendum must be balanced against obtaining members' opinions through other consultation processes, such as telephone or mail surveys.

30. The above mentioned considerations must be addressed by establishing a legal and procedural framework for a referendum at the Law Society.

31. Currently, there is no precedent for Convocation seeking the membership's approval in a referendum to adopt policies. An issue to be considered is whether there is authority in Convocation to delegate its responsibility to govern on particular issues.

b. Referenda in other Professional Governing Bodies

32. Regulatory bodies, that is, those having authority delegated to them by legislation to oversee professions, do not as a matter of course have direct member referenda provisions, because authority is vested on governing directors to govern the membership. This applies both in the legal and non-legal context. The Law Societies of Prince Edward Island, Newfoundland, Nova Scotia, Manitoba, Northwest Territories and Hong Kong, for example, have no provisions for referenda in their statutes and regulations.

33. Law Societies that do provide for referenda have the governing provisions explicitly set out in their governing legislation. (See Table I) These include, in Canada, those of Alberta and British Columbia, and overseas, those of the United Kingdom, Western Australia and New Zealand. These are some of the characteristics of their referenda provisions:

- except for New Zealand, there are provisions for members to solicit a referendum.
- there are no restrictions on the type of issue appropriate for referenda.
- most specify conditions for majority vote.
- there are specific requirements for calling a referendum, but once implemented, all consider the results as binding.

34. The following Ontario professional organizations have no legislative provisions for referenda: the College of Physicians and Surgeons, College of Family Physicians of Canada,
Institute of Chartered Accountants of Ontario, College of Nurses, Royal College of Dental Surgeons, College of Veterinarians.

35. Professional Engineers Ontario is required to hold a binding referendum to alter its by-laws and regulations. Referenda may be held on any other issue, but these would not be binding. A simple majority would carry a motion.

TABLE I. Referendum Provisions in Other Law Societies

Referenda	British Columbia	Alberta	United Kingdom	Western Australia	New Zealand
Issue	Any issue; mandatory for: changing electoral districts, removal of main officers.	No restriction	No restriction	No restriction	No restriction
Solicited by	General Meeting or by Benchers	50 members	Special General Meeting ; 20 members	General Meeting	Member of Governing Council
Number of Votes	Requires 2/3 referendum votes to change Rules.	2/3 majority	simple majority		Majority of votes plus 4 District Law Society votes
Binding	Yes	Yes	Yes	Yes	Yes
Additional		If a General Meeting resolution is not carried out, a referendum can be petitioned		Ballot has statements for and against, and summary of discussions	

c. Legal Basis

36. If, as a matter of policy, Convocation wishes to treat the results of the referendum as binding there are a number of issues to consider.

37. It is the view of the Task Force that the Law Society does not have the legal authority to conduct a binding referendum. There are no express provisions in the *Law Society Act,* old or new, its regulations or the rules made pursuant to subsection 62(1) of the *Law Society Act* permitting the holding of a binding referendum.

38. The legislature established the Law Society of Upper Canada through the *Law Society Act*, with a particular scheme of governance - parliamentary governance - one in which accountability is squarely on the elected decision makers. This is borne out by section 10 of the *Law Society Act*, which provides that, "the benchers shall govern the affairs of the Society..." It is also supported by the decision of Borins, J. in *Law Society of Upper Canada* v. *Ontario (A.G.)* (1995), 21 O. R. (3d) 666, when he wrote, "It is the benchers on whom the legislature has conferred the power of governance." Section 10 has not been amended by the new Act.

39. The conduct of a referendum, the results of which will be binding on Convocation, changes the governance scheme (for the purpose of this one issue) to one of direct democracy.

40. Convocation cannot change the Law Society's governance structure unilaterally. Such a change requires legislative amendment. Speaking of the election of benchers, Borins, J. noted in *Law Society of Upper Canada* v. *Ontario (A.G.)* that, "The governance of the members of the Society is a fundamental matter of policy which must be regulated by primary or subordinate legislation."(p.678) As indicated earlier, the holding of a binding referendum is not expressly permitted in the primary or subordinate legislation governing the Law Society.

41. Bencher remuneration is part of the affairs of the Law Society as it will be funded by the annual membership fee, which Convocation prescribes. Benchers would be abdicating their statutory responsibility under s. 10 of the *Law Society Act* to govern the affairs of the Society if they treated the results of a referendum as binding on Convocation.

42. In addition, holding a binding referendum is without precedent for the Law Society and represents a marked departure from the way benchers have governed the affairs of the Society in the past. All law societies who indicated that they were entitled to conduct referenda have explicit authorizing provisions set out in their governing legislation. See Table I for examples of these provisions.

43. The manner in which benchers have historically governed the profession is reflected in the rules made by Convocation pursuant to subsection 62(1) of the *Law Society Act*. The rules generally vest Convocation with final decision making authority.

44. For example, rule 26 provides that any power exercised by a committee is always subject to the approval of Convocation, except in those cases where Convocation has expressly given the committee the power to act.

45. Similarly, rules 52.1(53) and (54) provide that resolutions passed at the annual general meeting are not binding on Convocation, but must be considered by Convocation within six months of the meeting. It does not logically follow from those limited delegations of authority, neither of which empower any body other than Convocation to make decisions, that the legislation contemplates binding referenda by the members.

C. WHEN IS IT APPROPRIATE TO USE REFERENDA?

a. Assessment of Referenda as a Governance Tool

46. Referenda, the direct vote of citizens regarding a political decision, can be said to go to the very heart of democracy as it is an expression of the voice of the people. On the other hand, in recent years its greater use in some political systems (such as USA and Australia) has also been interpreted as an expression of a growing distrust in government and politicians.(2) [1]

47. Referenda have a long political history. In the USA the first referendum was introduced in Massachusetts in 1640. In Switzerland, the first referendum dates back to the 13th century.

48. In Canada, referenda have been an important instrument of nation-building at the national and provincial level and of administrative legitimacy at the municipal level. There have been more than 1,000 referenda in Canada: 2 at the national level, 53 at the provincial level and the majority at the municipal level. (3)

49. Referenda require clear legal basis. In Canada there are 15 statutes at the federal and provincial/territorial level that permit referenda on a variety of issues, including constitutional amendments. At the municipal level, all provinces have a Municipal Act or equivalent that authorizes municipalities to submit by-laws and issues to the electors. (4)

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[1] Numbers in parenthesis refer to the Bibliography at Appendix F.

50. A review of the literature, government papers and political commentaries on referenda reveals a series of arguments for and against the use of referenda as a governance tool.

51. The following tables summarize these arguments and consider their relevance to the present Law Society circumstances.(5)

TABLE II: Arguments in Favour of Referenda

General Arguments in Favour of Referenda	Their Relevance to the Law Society
It is Democratic • Voters directly decide on policies. • Fundamental issues can be decided directly by voters: direct democracy.	• The profession votes directly on policy issues, not Convocation. • Bencher remuneration is seen as a fundamental issue that voters and not Convocation should decide.
Accountability • Makes those who govern more sensitive to public opinion if their decisions will be subject to popular vote. • Can check the influence of interest or lobby groups.	• Convocation is held accountable by having decisions ratified or rejected by the profession. • Gives opportunity to vote to those not in the circle of influence of the benchers.
Legitimacy • Can strengthen credibility of the political system and confidence in leaders.	• Can strengthen the profession's confidence in the Law Society and Convocation.
Education • Can serve to educate the public on policy issues.	• Can educate the profession about the extent of the service benchers perform.

TABLE III: Arguments Against Referenda

General Arguments Against Referenda	Their Relevance to the Law Society
Distorts Policy Making • Distorts complex policy issues by reducing them to simplistic choices. • Voters not given the full menu of options needed to make rational choice. • Results are affected if the question is not stated clearly and the intent of the motion is not clear.	• The complex issue of increasing and diversifying access to the bench becomes the simplistic question of paying benchers. • The profession is not permitted to choose from the full options available to address the originating concern (e.g., limiting bencher terms of office and re-election, use of an executive committee, campaign funds for poor lawyers, reduce committee times, streamline discipline hearings, etc.) • The referendum ballot question solely on bencher pay may not clearly state the issue and the intent of the motion.
Subverts Parliamentary Democracy • Government by referenda usurps the role of elected legislators. • Clashes with the basic principle of responsible government, which means that those with delegated authority are held accountable. • Substitutes non-elected, non-accountable set of elites for elected, accountable ones.	• Can undermine the delegated authority of Convocation and its legal obligation to govern the profession. • After the vote, benchers cannot be held accountable for a decision to remunerate or not remunerate benchers. • Interest groups and elites within the profession have more resources to influence the popular vote than the ordinary member voter.
Unnecessary and Expensive • Governments already consult with polls, discussion papers, committee hearings, constituency offices. • Referenda are expensive and the cost is borne by taxpayers.	• The Law Society could consult through surveys, consultation hearings and the Internet at less expense. • The referendum expenses will be paid for by the membership fees.
Potential dangers • There is a risk that well funded interest groups may dominate the debate through lobby and advertising.	• Some benchers will have significantly greater resources to lobby for their viewpoints.

b. Optimum Conditions for Referenda

52. The review of the advantages and disadvantages of referenda in political life in general lead to the conclusion that there are some optimum conditions for the exercise of direct democracy through referenda. These include: (3)

i. A relatively uncomplicated policy issue

Examples of relatively simple policy issues are: allowing gambling casinos or liquor sales in an area or changing to daylight savings time. Examples of a complicated policy issue are: changes to the tax system that could have mixed consequences or the 1992 referendum on the complex Charlottetown Accord that was composed of many different proposals.(7)

ii. A clear and unambiguous question put to voters

Salient examples of unclear and ambiguous referenda:

- The 1995 Quebec referendum where a deliberately crafted question obfuscated the meaning of a yes vote: (separation or negotiation of sovereignty association?) (7) and
- In the USA, Proposition 209 whose misleading name (California Civil Rights Initiative) was really a motion against affirmative action. (10)

iii. An impartial administration of the referendum process

The process of electors directly choosing a policy or deciding fundamental issues for a nation (or association) can be seen as a proper exercise of direct democracy. However, it can and has been used historically with partiality by those in authority.(3) Only an impartial process legitimizes the results.

iv. Providing voters with comprehensive information to enable them to make a choice

A common procedure is to include with the ballot a background note on the issue with detailed statements of the arguments for and against the motion. The more complex the issues, the more responsibility there is to make sure voters have the necessary information to give them a comprehensive view of what exactly they are deciding with their vote.

53. Referendum dynamics have long been the object of study by political scientists. Referenda are usually seen as tools whereby a political decision is arrived at through the individual judgment and/or self interest of the voters. Therefore, their results are less predictable than elections, which have long-term partisan and social anchors:

> Referenda are subject to greater volatility and uncertainty than that typically found in ordinary parliamentary elections. (9)

54. There are two factors that seem to affect the results of referenda. These are the personal credibility and trust placed in the leaders that propose or oppose a motion, and their past performance. Therefore, referenda can generally be seen as a test of leadership.(9)

c. Optimum Referendum Issues

55. Those who believe that the use of referenda is a useful democratic device point out as well that this process should not be trivialized or overused. Therefore, the decision about whether an issue should be put to direct vote becomes crucial to reaping the advantages of a referendum.

56. There are several criteria or guidelines that have been proposed to help determine those issues that must be submitted to direct vote and those that need not. While these criteria refer to the political process as a whole, they can be usefully applied to the more narrow politics of professional governance.

4. The criteria, proposed by Boyer and based on the contributions of AV. Dicey, Arthur Meighen and Lord Hartington, are condensed in the following table and applied to the Law Society. (3)

TABLE IV: Guidelines For Deciding If An Issue is Appropriate for a Referendum

National Government	Law Society Governance
Core principle affected Does the proposed change positively affect a principle going to the root of our institutions?	Will the proposed change positively affect a core principle or the mandate of the Law Society?
No Disclosure and Much Doubt With the exception of an unforseen emergency that has arisen, legislation cannot be introduced if at election time the public is not informed of it and there is the very gravest doubt about what the decision of the public might be if informed.	Has this issue been an issue of discussion and disclosure at the bencher elections? Are there grave doubts about what the voters would decide if they were to know all the implications of granting bencher remuneration?
Well-informed voters needed There is an educational role to a referendum: is the proposal one where the voters must be well informed and the decision must be made on the weight of the argument and not on the basis of party loyalties?	Is this an issue that will require the membership to be well informed, and will it make a decision based on the weight of the arguments and not on the basis of any possible bencher groupings?
Potential Abuse of Power Is there a need for the referendum as a check on the party leaders in terms of abuse of power?	If the benchers decide to remunerate themselves, could this be interpreted as an abuse of power and reckless leadership?
Compliance Needed Is the proposed law or change one that depends at bottom for its enactment on the consent of the nation as represented by the electors?	Does the motion to remunerate benchers depend at bottom for its enactment on the consent of the members?
Will it give credibility Will a referendum mandate help make the government stronger or more credible in international negotiations on a specific issue?	Will referring bencher remuneration to a referendum help make the leadership of the Law Society stronger or more credible to the profession and the Ontario public at large?
Is there an impasse Is the issue one that needs to be resolved separately from the personalities of the country's politicians? Can the direct vote help the government or the country find a way out of an impasse?	Does the issue of bencher remuneration need to be resolved separately from the personalities of the current benchers? Is there an impasse in Convocation over this issue that a direct vote can clear?

d. Policy Implications of a Referendum at the Law Society

58. From a risk assessment perspective, the implementation of a referendum on bencher remuneration under current institutional conditions at the Law Society could have the following effects.

59. Possible positive outcomes include:

i. The establishment of direct vote of the membership in referenda as a proper tool of governance and new source of legitimacy for the Law Society.

ii. The image of Convocation could be enhanced in terms of public accountability and greater democratization of Law Society governance.

60. Possible negative outcomes include:

i. The benchers would be setting the precedent of using a governance tool without explicit or clear legal basis and without administrative limits or guidelines.

ii. Politically, the timing of the referendum is close on the heels of several controversial decisions made by this Convocation for which membership support was not sought. Furthermore, the nature of the issue, which can easily be perceived as a bencher vested interest, may result in a greater loss of credibility to the benchers and the Law Society in general.

D. WHAT WILL A REFERENDUM COST?

61. If a referendum were held there would be additional costs to the 1999 bencher election including:

- the printing and distribution of referendum materials
- personnel hours required to tally referendum votes
- costs related to possible funding of the Yes and No campaigns
- additional campaign material
- preparation and distribution of notices to the profession regarding the referendum issue and procedure

62. The costs of the referendum could escalate depending on the amount (if any) of funding allocated to campaigning.

63. The Law Society has allocated $200,000 to cover the cost of both the bencher election and referendum.

E. WHAT STEPS NEED TO BE TAKEN FOR A REFERENDUM?

64. If Convocation determines that it is appropriate to conduct a referendum, the Law Society would have to establish a procedural framework as outlined in paragraph #29, and ground rules for the referendum campaigns, and designate those in charge of writing the referendum question.

a. Referendum Campaign

65. On February 28, 1997, Convocation decided that some form of remuneration should be paid to benchers. It also decided that remuneration would only be implemented after a referendum ratification by the members, subject to Convocation's consideration of a report on referenda.

66. There is a clear division on this issue among benchers. If a referendum is called, will there be a formal designation of two camps of benchers who will wage campaigns, or will the referendum be defined as being called by the Law Society itself with no formal campaigning or lobbying by benchers?

67. The Law Society referendum that is currently being contemplated is an initiative of a governing body (i.e., Convocation) seeking voter/member approval for a policy that may be perceived as in the self interest of benchers. The members of the governing body itself are closely divided into proponents and opponents of the motion. It is therefore essential that the referendum process itself be and be seen to be untainted by bencher partiality.

68. If there is to be formal campaigning, the Law Society must ponder the following questions:

- Will there be two groups of benchers each in charge of the Yes and No referendum campaigns?
- Will the Law Society provide funds for the campaigns?
- Will there be limits set to the amount of money any side receives from the membership for this purpose?

69. Ground rules for the conduct of any possible referendum campaigning must be established. These may include:

- provision for equal funding for benchers on both sides of the issue to get their message across to the profession;
- possible limits of external funding;
- the type of canvassing that is appropriate and its timing;
- the definition of the role of the Law Society, benchers and staff, with respect to the referendum process;
- whether lawyers running for bencher should state on the ballot if they approve or disapprove of the referendum motion.

70. It is necessary to acknowledge that regardless of the formal decisions taken, informal lobbying will likely take place.

b. Wording of the Referendum Question

71. The wording of the referendum question will be a fundamental decision for the Law Society. It will be the hallmark of the impartiality and legitimacy of the process.

72. To give members the clearest and least complex question to vote on, the following issues should be considered beforehand:

i. Should benchers be remunerated?
Convocation has voted yes, but with the condition of further investigation of the implications, as expressed in the present report.

ii. If so, should they be remunerated on the basis of an hourly rate or by honorarium?
Convocation could decide this question based on the financial limits of the organization.

iii. If an hourly rate, should it be established at the Legal Aid rate or at some other rate?
Convocation could decide this question and set a rate and a cap.

iv. What are benchers going to be remunerated for?
Convocation could determine the duties that would be eligible for payment and those that would not.

v. What will it cost?
Estimates must be made on how much it will cost to implement the particular remuneration rate chosen and how it will affect the membership fee.

73. After having considered the above issues, a referendum question could then be formulated along the following model:

Motion
That benchers be remunerated for days of service at the Law Society that exceed 10 days of meetings, by payment of a (rate of $____per hour) or ($____honorarium per year/ per meeting), understanding that:

- there will be a limit of no more than ($_____/year) for any single bencher,
- that the total maximum cost to LSUC for bencher remuneration per year will be ($_____) and,
- the membership annual fee would have to be raised by ($__) per member.

Your vote:

Yes____
No____

74. The referendum ballot should be accompanied by an information leaflet that clearly and as objectively as possible describes both arguments for and against the motion and includes a synopsis of the debate on this issue at Convocation.

75. There are several options as to who should prepare the ballot motion and accompanying information leaflet to ensure that impartiality exists and is seen to exist:

- A group of benchers representing both sides of the motion
- A group of Law Society staff, with no involvement of any bencher
- A group of members of the profession, who are not benchers.

F. OTHER MEANS OF CONSULTING THE MEMBERSHIP

a. Advisory Referendum

76. Convocation could determine in advance of the referendum that the result would be advisory rather than binding. The referendum would then be conducted and Convocation would consider the result, along with all the other factors, when it reconsiders the issue of bencher remuneration.

77. An advisory referendum requires Convocation to determine all of the same issues that arise in the context of a binding referendum - the process, funding of the Yes and No campaigns, wording of the question, information sent to the electorate, etc. It will also have the same costs associated with a binding referendum.

78. The major disadvantage of conducting an advisory referendum is that it frames what is really a consultation process in referendum language, thereby raising the expectation among the electorate that the results will be binding on Convocation.

b. Opinion Poll

79. Convocation could commission an opinion poll of the profession to obtain a reliable and quantifiable response to the issue of bencher remuneration. An opinion poll is conducted by asking a representative sample of the membership to respond to pre-determined questions. To obtain statistically valid results, approximately 3,000 members would be surveyed. To ensure that the sample is representative, the group could be broken down by sex, by place of practice (inside and outside of Toronto) and by size of firm.

80. The cost of an opinion poll varies with the method used (telephone, written questionnaire, interview), the size of the sample and the wording and number of questions. A telephone survey will produce the most reliable results at the least cost. A fifteen-minute telephone survey of 3,000 members would cost approximately $80,000.

81. The advantages of an opinion poll are that it can provide an accurate description of the views of the profession if it is properly executed. It is also less costly than a referendum.

82. The disadvantage of an opinion poll is that, although it provides a statistically valid representation of the views of the profession, it does not allow all members to provide their opinion.

G. OPTIONS FOR CONVOCATION'S CONSIDERATION

83. There are seven options to consider:

i. Pay Benchers

The Law Society could proceed with bencher remuneration without submitting the issue to a referendum or otherwise consulting the membership. This course of action, while expedient, may be questioned by the membership as self-serving and possibly as a misuse of membership fees. This option would carry the highest political risk especially after the expectation of a referendum has been raised.

ii. Get Legal Basis

Convocation could seek an amendment to the *Law Society Amendment Act* and/or its by-laws so that a clear legal basis for referenda can be established. Then, having such a basis, Convocation could proceed with a referendum on bencher remuneration. This alternative would have the risk of delay as it would take some time to carry out. However, in the end it would eliminate legal risks.

iii. Conduct a binding referendum

The Law Society could proceed with a referendum without explicit legal authority. This option would pose two main risks: (1) the results could be challenged as illegitimate and (2) a precedent would be set whereby a powerful governance tool (referendum) is applied without clear ground rules for its use and might thereby undermine the decision making capacity of Convocation in the future.

iv. Conduct an advisory referendum

The Law Society could conduct a referendum the results of which would be merely advisory in nature. This option, although available to Convocation, has many of the disadvantages of conducting a binding referendum, such as the expense and campaign issues. In addition, it may raise the expectation of the membership that its results should carry more weight in Convocation's decision-making process than the results of a survey or poll.

v. Commission an opinion poll of the membership

The Law Society could obtain the views of the profession by conducting an opinion poll of the membership.

vi. Solve the Underlying Problems

The Law Society could postpone the issue of bencher remuneration until it has addressed the concerns that originally prompted it: i.e., the issues of bencher representativeness and bencher time efficiency. This option would carry the least political risk. It was also suggested by the *Ferguson Report.*

vii. Do Nothing

The Law Society could continue with the status quo and not conduct a referendum or remunerate benchers. This option would carry no immediate political risk but would postpone addressing the issues of bencher representativeness and efficiency to a later date.

H. RECOMMENDATIONS OF THE TASK FORCE

84. With respect to a referendum, the Task Force is unanimously of the view that the Law Society does not have the legal authority to conduct a binding referendum, and on this basis, makes the following recommendations:

i. The Law Society ought not to conduct a binding referendum on the issue of bencher remuneration without the legal authority to do so. Convocation cannot avoid its responsibility to govern in the public interest by delegating it to the membership.

ii. The passage of the Law Society Amendment Act, 1998 in December 1998 took an enormous amount of time and effort. Convocation did not direct that referenda provisions form part of the legislative amendment package. The new Act, therefore, does not provide the legal basis to conduct a binding referendum. The pursuit of an amendment to the recently passed Act modifying the Law Society governance framework by introducing conditions for direct membership voting in its decision making process would be a long and arduous process. The Task Force recommends that such a process not be undertaken at this time given the immense amount of bencher time and effort that would be required.

iii. The Law Society could conduct an advisory referendum on the issue of bencher remuneration at the upcoming election, but the Task Force recommends against it for the following reasons:

(1) an advisory referendum has many of the disadvantages of a binding referendum, such as the expense and campaign issues, and none of the benefits.

(2) combining a referendum question with the election creates an election issue that might otherwise not exist.

(3) framing what is otherwise a consultation process (advisory referendum) in a referendum structure may create expectations on the part of the electorate that the results will be binding on the Law Society.

iv. The Task Force recommends that if Convocation wishes to consult the membership on this issue, it do so by other means at a time separate from the election.

IV. THE ISSUE: BENCHER REMUNERATION

A. BACKGROUND

85. The committee that produced the *Ferguson Report* considered the issue of bencher remuneration and included it as an issue in its consultation process. Although the committee was unable to reach a consensus on bencher remuneration, its members agreed that any remuneration method established must not encourage members to run in the hope of monetary reward. Sixty percent (60%) of members that were consulted by the committee were opposed to bencher remuneration because they considered that the honour and privilege associated with being a bencher was enough recompense. The Report recommended that there be further study of ways to overcome financial obstacles that deter members from running for bencher.

86. The Finance and Audit Committee reported to Convocation on February 28, 1997 that it was unable to make a decision on bencher remuneration. The only consensus was on compensation for attendance at discipline and admissions hearings. Convocation debated the issue of providing benchers some remuneration beyond compensation for reasonable expenses incurred while serving the Law Society. The main points of this debate are summarized in the following table.

TABLE V: Should Benchers Be Remunerated?

Yes, benchers should be paid.	No, benchers should not be paid.
It is a question of access. Payment would bring a greater diversification to the bench: newly admitted lawyers, women, lawyers of different specialities, racial and economic backgrounds.	It is not a question of access. The bench is already diversified: 50% are sole or small firm lawyers, and many different backgrounds are currently represented.**[2]
It is as question of economic hardship. Payment would decrease hardship for sole or small firm practitioners or benchers from outside of Toronto.	It is a question of being paid with honour. Benchers are paid with respect and high profile in the profession.
It is a question of elitism. To receive a fee is not a dishonour. Currently, only those who can afford it can participate.	It is a question of volunteering. It is a public service, a community service: it is a privilege to serve. Everyone knows the commitments before running for bencher.
It is a question of long hours that take time not only from work but family also.	The real problem is time: lengthy terms of office, and an inefficient, lengthy discipline process. Payment itself will not change this.
Payment Benchers can give up remuneration if they do not want it.	Payment • It is a conflict of interest to vote for one's own pay. • If there is to be true compensation, pay the proper rate of $150 not $67. • The profession should not subsidize public service.

B. WHAT DO OTHER CANADIAN LAW SOCIETIES DO?

87. Most law societies in Canada do not remunerate their benchers as shown in the Table VI. Unlike the lay benchers of the Law Society of Upper Canada who are remunerated by the Ontario government, the lay benchers in Manitoba and Nova Scotia are paid by the law societies themselves.

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[2] 57% of elected candidates in 1995 were sole practitioners or from firms of 2-4 lawyers; only 15% were from firms with 50 or more lawyers. While 30% of Ontario lawyers are women, 32% of benchers are women.

TABLE VI: Bencher Remuneration at Canadian Law Societies

Law Society of Alberta	No remuneration for benchers. President gets honorarium.
Law Society of British Columbia	No remuneration for benchers. President gets honorarium.
Law Society of Manitoba	No remuneration for benchers. Lay benchers receive $75 for bencher meetings and $50 for committee meetings
Law Society of Newfoundland	No remuneration for benchers or Treasurer.
Law Society of New Brunswick	No remuneration for benchers or President.
Law Society of Nova Scotia	No remuneration for benchers. Lay benchers receive $100 per meeting.
Law Society of the Northwest Territories	No remuneration for benchers or President.
Law Society of Prince Edward Island.	No remuneration for bencher or President
Barreau du Quebec	No remuneration for benchers. Executive Committee members (9 benchers) each get $300 per meeting, $150 per half day.
Law Society of Saskatchewan	No remuneration for benchers, except for discipline cases when they get $300 per day. President gets honorarium.
Law Society of the Yukon	No remuneration for benchers.

C. WHAT WILL IT COST TO REMUNERATE BENCHERS?

88. In 1997, the Chief Financial Officer calculated the cost of remunerating benchers.(1) It was based on detailed information gathered on the time spent by each bencher at Convocation, Discipline Hearings, Discipline Convocation and Committee Days. The cost was calculated for actual time spent on these activities as recorded in minutes and attendance records.

89. The cost of remunerating benchers for all time spent on the above activities for the year 1995, using the Legal Aid rate of $67 per hour, would have been $400,826. This report considered an alternative scenario in which the first ten days of time dedicated to Law Society business would not be remunerated. In that case, the cost would have been reduced to $300,763.

90. The cost of remunerating benchers for the year 1997, using the Legal Aid rate and a seven hour day, and assuming full attendance by all benchers at all Convocation, Discipline Convocation and Committee days (a minimum of 27 days), in addition to the 412 bencher days spent at discipline hearings, would have been approximately $750,400. If one assumes only a 66% attendance rate at all these dates, the cost of bencher remuneration for 1997 would have been approximately $561,000.

91. There is no provision in the current budget for bencher remuneration. If remuneration is adopted, the amount would ultimately come from the membership fee. The 1999 budget assumes 24,300 members. Therefore, every $100,000 in bencher remuneration would add approximately $4 per member to the levy. According to the estimates mentioned above, this would require an increase in the membership fee of between $20 and $28 per member (assuming the range of total bencher cost would be between $561,000 and $750,400).

92. The Law Society reimburses benchers' expenses. The amount budgeted for these expenses in 1999 is $607,100.

a. Are There Any Options?

93. There are a variety of methods used by other regulatory professional bodies. The following table shows the type of positions that are remunerated and remuneration rates for the Institute of Chartered Accountants of Ontario, Royal College of Dental Surgeons, Professional Engineers of Ontario, College of Nurses, and the College of Physicians and Surgeons of Ontario.

TABLE VII: Remuneration at Other Professional Associations

	Accountants	Dentists	Engineers	Nurses	Physicians
Time or duties expected	13 to 15 days/year for Council and Committees President expected: 20 hours/week	Payment is for College business, prorated for half and quarter days	n/a	n/a	n/a
Positions and amounts paid	President (if sole practitioner): $40,000 honorarium for lost billable time.	President: $20,445 honorarium + $1,120/day Committee chairs: $950/day Members of Council: $750/day	No honoraria	Elected members : $150/day	President: $950/day Vice-President: $750/day Elected members: $650/day

94. The main options for bencher remuneration are:
- annual stipend or honorarium
- per diem rate
- hourly rate.

95. If any of these payment methods were to be adopted, rules would have to be established to determine bencher eligibility to receive payment. These rules would include:

i. Duties to be paid for

Defining the specific duties for which benchers would be remunerated. This would include considering remuneration for attendance at:

- Convocation
- Committee meetings
- Discipline Convocations
- Discipline hearings
- Working groups and task forces.

The discipline duties of benchers have, up to now, been the most onerous on their time. However, once the new legislation is implemented there will be significant changes to the discipline process that ought to decrease the demand on bencher time.

ii. Which benchers are paid

While Convocation has approved remuneration for benchers, it was not made explicit which benchers are entitled to receive it: elected benchers, benchers by virtue of office, including life benchers, and former Treasurers. Without further qualifications, all benchers would be entitled to remuneration.

iii. Limits

Determining any cap on the annual rate of remuneration if bencher remuneration were to vary from a simple annual stipend.

iv. Timing

Determining whether remuneration is to be paid monthly, semi-annually, annually.

b. What is the Purpose of Remunerating Benchers?

96. The preferred method of remunerating benchers would depend on the purpose the remuneration is intended to serve. In turn, the administrative processes required to manage bencher remuneration would vary from the simple to the complex depending on the method of remuneration.

i. Remuneration for lost billable time: hourly rates

If the remuneration is intended to compensate benchers for lost time, remuneration based on hourly rates for actual lost hours of billable time might best achieve this objective. An hourly billing method would require the most complex administration on the part of the Law Society.

ii. Recognition of service: honorarium

If remuneration is intended to recognize the service to the public and the profession, an annual stipend or honorarium might best satisfy this objective. An annual stipend would require the least administrative involvement if rules were to establish bencher eligibility for it. Honoraria would not only be the simplest remuneration system to administer but also the easiest to budget from year to year.

iii. Mixture

A hybrid of two or more of these methods could be developed to achieve a variety of desirable objectives.

D. RECOMMENDATION OF THE TASK FORCE

97. With respect to bencher remuneration, this Task Force recognizes that Convocation has made a policy decision to remunerate benchers. However, this decision was made under a different statute from the one that will govern the Law Society in the future and before the implementation of the organizational changes that Project 200 will bring. These circumstances will affect bencher workload both positively and negatively. A sound bencher remuneration scheme cannot be developed without an accurate information base on bencher workload and time commitments.

98. The Task Force therefore unanimously recommends that a Task Force comprising benchers who do not have to stand for re-election be struck immediately to study over the next year the demands placed on bencher time as a result of the new legislation, and to revisit the issue of bencher remuneration and develop options for a remuneration scheme for Convocation's consideration in January 2000.

V. DECISIONS FOR THE CONSIDERATION OF CONVOCATION

A. MAIN CONCLUSIONS

99. Convocation is asked to consider the conclusions of this Task Force and approve its recommendations.

Regional Bencher Election

100. With respect to the regional bencher election, it is the unanimous recommendation of the Task Force that in view of:

- the consultation processes already carried out by the committees that produced the Ferguson Report and the Scott Report,
- the agreement of the Canadian Bar Association and the County and District Law Presidents' Association with the scheme, and
- the approval of the scheme by two prior Convocations, that the original Ferguson/Scott regional bencher election scheme, including the method of filling a regional bencher vacancy referred to in paragraph #19, proceed as approved and be reassessed following the 1999 election.

Referendum

101. With respect to a referendum, the Task Force is unanimously of the view that the Law Society does not have the legal authority to conduct a binding referendum, and on this basis, makes the following recommendations:

i. The Law Society ought not to conduct a binding referendum on the issue of bencher remuneration without the legal authority to do so. Convocation cannot avoid its responsibility to govern in the public interest by delegating it to the membership.

ii. The passage of the Law Society Amendment Act, 1998 in December 1998 took an enormous amount of time and effort. Convocation did not direct that referenda provisions form part of the legislative amendment package. The new Act, therefore, does not provide the legal basis to conduct a binding referendum. The pursuit of an amendment to the recently passed Act modifying the Law Society governance framework by introducing conditions for direct membership voting in its decision making process would be a long and arduous process. The Task Force recommends that such a process not be undertaken at this time given the immense amount of bencher time and effort that would be required.

iii. The Law Society could conduct an advisory referendum on the issue of bencher remuneration at the upcoming election, but the Task Force recommends against it for the following reasons:

(1) an advisory referendum has many of the disadvantages of a binding referendum, such as the expense and campaign issues, and none of the benefits.

(2) combining a referendum question with the election creates an election issue that might otherwise not exist.

(3) framing what is otherwise a consultation process (advisory referendum) in a referendum structure may create expectations on the part of the electorate that the results will be binding on the Law Society.

iv. The Task Force recommends that if Convocation wishes to consult the membership on this issue, it do so by other means at a time separate from the election.

Bencher Remuneration

102. With respect to bencher remuneration, the Task Force recognizes that Convocation has made a policy decision to remunerate benchers. However, this decision was made under a different statute from the one that will govern the Law Society in the future and before the implementation of the organizational changes that Project 200 will bring. These circumstances will affect bencher workload both positively and negatively. A sound bencher remuneration scheme cannot be developed without an accurate information base on bencher workload and time commitments.

103. The Task Force therefore unanimously recommends that a Task Force comprising benchers who do not have to stand for re-election be struck immediately to study over the next year the demands placed on bencher time as a result of the new legislation, and to revisit the issue of bencher remuneration and develop options for a remuneration scheme for Convocation's consideration in January 2000.

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

(1)	Copy of the Treasurer's Report to Convocation - June 26, 1998.	(Appendix A)
(2)	Copy of the Ferguson Report - 1990.	(Appendix B)
(3)	Copy of the Scott Report - 1993.	(Appendix C)
(4)	Copy of the Electoral Regions - 1993.	(Appendix D)
(5)	Copy of the Bencher Election Rules - 1996.	(Appendix E)
(6)	Bibliography.	(Appendix F)

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Re: Regional Bencher Election

It was moved by Mr. Lamek, seconded by Mr. Millar that the 1999 Bencher election proceed as approved by Convocation on January 29th, 1994 for regional representation and that the procedure be reassessed following the 1999 election.

Not Put

A debate followed.

It was moved by Mr. MacKenzie, seconded by Mr. Banack that the recommendation at the top of page 42 of the Report be amended by adding the following after the word "that":

"subject to the qualification that the City of Toronto will not be sub-divided into electoral districts"

It was moved by Mr. Carey but failed for want of a seconder that page 6 of the Report be amended so that the 2 electoral regions of the former Metropolitan area of Toronto have 2 regional benchers.

Convocation took a recess at 10:30 a.m. and resumed at 10:50 a.m.

MARCOVITCH DISCIPLINE MATTER

Ms. Catherine Braid appeared for the Society. Ms. Kelly McKinnon appeared for the solicitor who was present.

Messrs. Topp, Feinstein, Wilson and Copeland and Ms. Curtis did not participate.

A Direction of Authorization signed by the solicitor was produced and filed as Exhibit 3.

The matter was adjourned to the January 28th Convocation peremptory to the solicitor.

Continuation of Bencher Election Report

It was moved by Mr. Wright, seconded by Mr. Krishna that whereas regional representation is a highly salutary policy deserving our unwavering support; and whereas Convocation should derogate from the democratic process as little as possible and, where possible, reduce unnecessary costs, complexity and administrative headache; be it moved that the 1999 bencher election be conducted as follows:

1. The 1999 vote will be held as in the past.
2. Following the vote, the list of elected benchers will be scrutinized to ensure that each of the 9 electoral districts is represented.
3. In the event that a region is not represented, the list of non-elected candidates will be scrutinized to determine the candidate with the higher number of votes who is from the unrepresented region.
4. The said candidate shall replace the elected bencher who received the lowest number of votes from a region that elected at least 2 benchers.

The mover and seconder accepted an amendment by Mr. MacKenzie by substituting the number of electoral districts from 9 to 8.

Not Put

It was moved by Mr. Epstein, seconded by Mr. Carey that the Treasurer call for a vote on the question: should regional benchers be elected by the members in their own region.

It was moved by Mr. DelZotto, seconded by Mr. Crowe that the Treasurer's ruling be challenged.

Lost

The question put in the Epstein/Carey motion re: should regional benchers be elected by members in their own region was answered in the affirmative on a vote of 24 (For) - 10 (Against) - 3 (Abstentions)

ROLL-CALL VOTE

Aaron	Against
Adams	For
Armstrong	For
Arnup	For
Backhouse	For
Banack	For
Carey	For
Carpenter-Gunn	For
Carter	For
Chahbar	Against
Cole	For
Copeland	For
Crowe	Abstain
Curtis	Against
DelZotto	Against
Eberts	Abstain
Epstein	For
Feinstein	For
Gottlieb	For
Harvey	Against
Krishna	Against
Lamek	For
Keenan	For
MacKenzie	Against
Millar	For
Murphy	For
Murray	For
O'Brien	For
Ortved	For
Puccini	Against
Robins	For
Ruby	Against
Stomp	Against
Swaye	For
Topp	For
Wilson	For
Wright	Abstain

A roll-call vote was taken together on the MacKenzie/Banack motion that the City of Toronto not be sub-divided into electoral districts versus the recommendations by the Task Force chaired by Mr. Lamek.

The MacKenzie/Banack motion carried.

ROLL-CALL VOTE

Aaron	MacKenzie
Adams	Lamek
Armstrong	MacKenzie
Arnup	Lamek
Backhouse	MacKenzie
Banack	MacKenzie
Carey	Lamek
Carpenter-Gunn	MacKenzie
Carter	MacKenzie
Chahbar	MacKenzie
Cole	Lamek
Copeland	MacKenzie
Crowe	MacKenzie
Curtis	Lamek
DelZotto	MacKenzie
Eberts	MacKenzie
Epstein	MacKenzie
Feinstein	Lamek
Gottlieb	MacKenzie
Harvey	MacKenzie
Keenan	MacKenzie
Krishna	MacKenzie
Lamek	Abstain
MacKenzie	MacKenzie
Millar	MacKenzie
Murphy	MacKenzie
Murray	Lamek
O'Brien	MacKenzie
Ortved	MacKenzie
Puccini	Abstain
Robins	Lamek
Ruby	MacKenzie
Stomp	Lamek
Swaye	Lamek
Topp	Lamek
Wilson	Lamek
Wright	Lamek

It was moved by Mr. MacKenzie, seconded by Mr. Ruby that there be no regional bencher.

The Treasurer ruled the MacKenzie/Ruby motion contrary to the statute.

Re: Referendum and Bencher Remuneration

It was moved by Mr. Lamek, seconded by Mr. Millar that Convocation consult the membership on the referendum issue at a time separate from the 1999 election.

Not Put

It was moved by Mr. Gottlieb, seconded by Mr. Aaron that effective June l, 1999 an honorarium be paid to benchers, the amount to be determined by the establishment of a task force to be composed of the current Treasurer Harvey Strosberg and former Treasurers Paul Lamek and Susan Elliott.

Lost

ROLL-CALL VOTE

Aaron	For
Adams	Against
Arnup	Abstain
Backhouse	Against
Banack	Against
Carey	For
Carpenter-Gunn	For
Carter	Abstain
Chahbar	Against
Cole	Abstain
Copeland	For
Crowe	For
Curtis	For
DelZotto	Abstain
Epstein	Against
Feinstein	Against
Gottlieb	For
Harvey	Against
Keenan	Against
Krishna	Against
Lamek	For
MacKenzie	Against
Manes	Against
Millar	Against
Murphy	Against
Murray	Against
O'Brien	For
Ortved	Against
Puccini	For
Robins	Against
Ruby	For
Scott	Against
Stomp	For
Swaye	Against
Topp	Against
Wilson	For
Wright	Abstain

It was moved by Mr. Epstein, seconded by Ms. Stomp that the Law Society conduct a scientific poll to determine the membership's views with regard to bencher remuneration as soon as practicable but before June 30th, 1999.

Lost

It was moved by Mr. Topp, seconded by Ms. Backhouse that there be an advisory referendum on the issue of bencher remuneration at this election.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	For
Arnup	Abstain
Backhouse	For
Banack	For
Carey	For
Carpenter-Gunn	For
Carter	For
Chahbar	For
Cole	For
Copeland	For
Crowe	For
Curtis	Against
DelZotto	For
Epstein	For
Feinstein	For
Gottlieb	Against
Harvey	For
Keenan	Against
Krishna	For
Lamek	Against
MacKenzie	For
Manes	For
Millar	For
Murphy	For
Murray	For
O'Brien	For
Ortved	For
Puccini	For
Robins	Abstain
Ruby	Against
Scott	For
Stomp	Against
Swaye	For
Topp	For
Wilson	For
Wright	For

THE REPORT AS AMENDED WAS ADOPTED

MOTION - APPOINTMENT

It was moved by Mr. Ruby, seconded by Mr. Topp that Abdul Chahbar and Nora Angeles be appointed as members to the Lawyers Fund for Client Compensation Committee.

Carried

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

The Treasurer and Benchers had as their guests for luncheon Mr. Norm Rogers, life member and Mr. Justice E. Wren.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Aaron, Adams, Armstrong, Banack, Carey, R. Cass, Chahbar, Cole, Copeland, Crowe, Curtis, Epstein, Feinstein, Gottlieb, Keenan, Krishna, Lamek, Lawrence, MacKenzie, Manes, Millar, Murphy, Murray, Puccini, Robins, Ruby, Scott, Stomp, Swaye, Topp, Wardlaw, Wilson and Wright.

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IN PUBLIC

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Re: Professional Development and Competence Committee

Mr. Topp withdrew his objection made to the Professional Development and Competence Committee Report which would come back with the Elliott Committee.

Report of the Professional Regulation Committee

Meetings of December 10th, 1998 and January 7th, 1999

Mr. MacKenzie presented the Report of the Professional Regulation Committee.

Professional Regulation Committee
December 10, 1998 and January 7, 1999

Report to Convocation

Purpose of Report: Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on December 10, 1998 and January 7, 1999. In attendance were:

December 10:

Eleanore Cronk (Chair)

Neil Finkelstein (Vice-Chairs)
Gavin MacKenzie
Niels Ortved

Gary Gottlieb
Laura Legge

Staff: Jonathan Batty, Janet Brooks, Leslie Cameron, Hershel Gross, Scott Kerr, Elliot Spears, Richard Tinsley, Jim Varro, and Jim Yakimovich

January 7:
Eleanore Cronk (Chair)

Gavin MacKenzie (Vice-Chairs)
Niels Ortved

Marshall Crowe
Gary Gottlieb

Staff: Jonathan Batty, Leslie Cameron, Scott Kerr, Felecia Smith, Elliot Spears, Richard Tinsley, Jim Varro, and Jim Yakimovich

2. This report contains the Committee's information reports on:
- ♦ review of working group reports on Rules 7 and 23 and Rule 20 of the Rules of Professional Conduct;
- ♦ update on the status of reviews of draft regulations, rules and by-laws pursuant to the *Law Society Amendment Act, 1998;*
- ♦ results of the spot and focussed audits in 1998 in accordance with the program approved by Convocation, including that last group of spot audits completed in 1998; and
- ♦ commencement of the ADR pilot project in the regulatory and advisory departments.

INFORMATION

REVIEW OF RULES 7 AND 23 AND RULE 20 OF THE RULES OF PROFESSIONAL CONDUCT
(December 10, 1998 Meeting)

3. The Committee completed a review of discussion papers from working groups[1] of the Committee on the three rules noted above, as a result of issues about these rules earlier identified for review by the Committee. Rules 7 and 23, given the similar subject matter, were grouped together for the review.

4. With respect to Rule 7, a specific case was brought to the attention of the Discipline Authorization Committee in which a member borrowed funds from a client in contravention of the Rule, which prohibits lawyers borrowing from clients. This was notwithstanding investigative information that the lender/client:
- was fully advised of the circumstances of the transaction;
- obtained independent legal representation, and
- had experience and sophistication in lending transactions.[2]

It was questioned whether it was appropriate to discipline a member for a contravention of Rule 7 in these circumstances. If these types of transactions are not to be considered a contravention of the rule, amendment to the rule would be necessary.

5. The Committee's focus with respect to Rule 23 was on paragraph 6 of the Rule, which generally prohibits members from guaranteeing an indebtedness where a client is either the lender or borrower. This rule was implemented in order to prevent lawyers from inducing clients to enter into loan transactions based on a perception of creditworthiness of lawyers.

6. It is permissible for members to enter into joint business ventures with clients provided that there is compliance with Rule 5 (conflicts of interest) and Rule 7 (borrowing from clients).[3]

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[1] For Rules 7 and 23, benchers Laura Legge and Gary Gottlieb, assisted by staff member Michael Seto, and for Rule 20, the same benchers assisted by staff member Hershel Gross.

[2] In this case, the funds were provided to the solicitor from the client's company, a financial management organization, which was independently represented in the transaction.

[3] Typically, when raising capital for the joint business venture, all participants in the venture are called upon to provide joint and several personal

7. Notwithstanding this, Rule 23 (6) appears to prohibit a lawyer from providing a guarantee in these circumstances, a prohibition which effectively prevents a member from participating in an otherwise permissible activity.

8. Rule 20 requires that a lawyer must have approval of Convocation to employ, use the services of or occupy office space with a person who has been disbarred, suspended or permitted to resign as a result of disciplinary action. The primary issue for the Committee was whether Rule 20 should apply to administratively suspended lawyers (in contrast to disciplinary suspensions). Rule 20 does not distinguish between *disciplinary* suspensions and *administrative* suspensions (i.e. for failing to pay Law Society annual fees or LPIC levies). The question was framed in terms of whether Rule 20, which may be disadvantageous to a certain status of member, is still necessary as a regulatory measure in the public interest.

9. The broader question of whether Rule 20 should continue to exist was joined in the discussion. The question of whether Convocation should continue to be the body which approves the applications was also raised.

10. The Committee considered a number of options with respect to the issues relevant to each rule and agreed on proposals for changes, where warranted.

11. However, these proposals are not being reported to Convocation by the Committee for discussion or approval. The Committee agreed, in recognition of mandate of the Task Force to Review the Rules of Professional Conduct, which is now well into its work, to refer the results of its work to the Task Force for its consideration. The Task Force will then have the benefit of the Committee's review as the Task Force prepares for its report to Convocation this spring.

STATUS OF REVIEWS OF DRAFT REGULATIONS, RULES AND BY-LAWS PURSUANT TO THE *LAW SOCIETY AMENDMENT ACT, 1998*

(December 10, 1998 and January 7, 1999 Meetings)

3. The Committee is continuing with its review of draft regulations, by-laws and rules of practice and procedure, prepared by staff in connection with the operational implementation of the legislative reforms pursuant to the *Law Society Amendment Act, 1998.* The *Act* has received royal assent and will come into force on February 1, 1999.

4. To date, the draft of the regulation on Hearings by Hearing Panel and the Complaints Resolution Commissioner - Selection Committee and Appointment of Complaints Resolution Commissioner was approved by the Committee on December 10 and forwarded to Queen's Park. A further draft of the regulation prepared by legislative counsel at Queen's Park has been received by the Society and should be finalized shortly.

5. The Committee reviewed at its December 10 meeting a first draft of the by-law on the Proceedings Authorization Committee. Revisions proposed by the Committee are being incorporated for final review by the Committee within the two weeks commencing the week of January 11.

6. Drafts of two by-laws dealing with trust account obligations and filing responsibilities, currently appearing in Regulation 708, are near completion and will be reviewed by the Committee within the same two weeks.

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guarantees for any loans. This is a business requirement regardless of whether the participant in the venture is a lawyer or not. There is no concern of undue influence or unfair inducement arising from the lawyer's status.

7. A significant portion of both the December 10 and January 7 meetings was devoted to a review of the draft Rules of Practice and Procedure, which govern all hearings authorized by the legislation. A revised draft has been circulated to Committee members, and has been distributed to representatives of legal organizations that expressed an interest in consulting with the Law Society on procedural issues. Further to arrangements through the Treasurer's office to engage in these consultations, two meetings with representatives from the Canadian Bar Association - Ontario, Metropolitan Toronto Lawyers' Association, Criminal Lawyers' Association, The Advocates' Society and County and District Law Presidents Association were arranged for the weeks of January 11 and 18.

8. The regulation, by-laws and rules are to be presented to Convocation for discussion and approval at the special Convocation scheduled for Thursday, January 28, 1999. It is anticipated that these documents will be distributed to benchers at the January 22, 1999 regular Convocation.

REPORT ON THE RESULTS OF THE SPOT AND FOCUSED AUDIT PROGRAM 1998

(January 7, 1999 Meeting)

INTRODUCTION

9. James Yakimovich, Director of Audit and Investigations, provided summary reports to the Committee on the results of the completion of:
   - the last spot audits in 1998, pursuant to the 100 spot audits authorized in October 1998,
   - the approximately 400 spot audits completed in 1998, and
   - focused audits in the year 1998.

10. These results are reported to Convocation in keeping with Convocation's direction for quarterly reports on the spot and focused audit programs.

I. REPORT ON COMPLETION OF SPOT AUDITS

A. OVERVIEW

11. At the October 1998 meeting of the Committee, approval was granted to conduct an additional 100 spot audits for completion by December 1998. Instructions under Regulation 708, section 18, were received from the Chair on October 27, 1998.

12. The basis of selection of firms subject to spot audit is one-half selected on a random basis and one-half selected on the basis of the firm's failure to file a financial report (Private Practitioner's Report) with the Law Society.

13. Although 100 spot audits were approved and selected, only 89 spot audits were completed by December 11, 1998 because of time constraints imposed by the October authorization. Of the balance, ten law firms have yet to be audited, and indulgences were granted to permit firms to bring records fully up to date prior to the commencement of the audit. Appointments were made with these ten firms to conduct the audit by the end of December 1998. One audit was cancelled during the week of December 7, 1998 as the member was hospitalized. Given the late date, this audit was not replaced with another selection.

B. RESULTS SUMMARY

14. Eighty four law firms or 94% of the 89 spot audits conducted detected some form of trust accounting records inadequacies or other conduct which requires further investigation. The breakdown with respect to the 84 law firms is as follows:
    - 7.9%, or seven audits, were of a nature which gave rise to a subsequent request to conduct a more in-depth investigation. Six firms in this group are "fail to file" firms and one firm was a random selection;
    - 86.5%, or 77 audits, were dealt with by providing administrative guidance.

15. The average cost for each spot audit is $1,200.00

16. Ninety eight percent of the members that responded to a post audit survey reported that the auditors were courteous, considerate and helpful.

C. THE LAW FIRM SELECTION PROCESS

17. A computer based random selection process was developed to select law firms for spot audits. Initially 50 law firms were selected on a random basis and 50 law firms were selected because the firm (member) failed to file the most recent financial report form (Private Practitioner's Report) with the Law Society in spite of repeated administrative requests for the report. As noted earlier, nine firms in the original selection were replaced due to medical or other reasons that would not make the audit practical. Additional authorization was sought to replace these nine firms. This secondary process resulted in the imbalance between randomly selected and non-filing members, as disclosed in Chart 1.

Firms - Geographic Area

18. The geographic location of selected law firms was as follows:

Chart 1

Geographic Area	Number of Total	Number of Law Firms Randomly Selected	Number of Law Firms Selected Because of Non Filer Status
North Ontario	5	2	3
South Ontario	9	4	5
East Ontario	7	7	0
West Ontario	20	12	8
GTA (Greater Toronto Area)	58	33	25
Total	99*	58	41

*One of the hundred was cancelled.

Firms - By Firm Size

19. Law firms, by size, selected for spot audit, were as follows:

Chart 2

Firm Size	Number of Firms in Ontario	
Sole Practitioner	82 Firms	83 %
Partnership - 2 to 10 Partners	17 Firms	19%

D. SPOT AUDIT FINDINGS

20. Findings with respect to the completed 89 audits, about 1% of all Ontario law firms, are summarized as follows:

Chart 3

	Total	% of 99 Firms	% of 89 Firm	Random Selection	Non Filer
Trust accounting records inadequacies of a serious nature, or other conduct which requires further investigation, and for which authority was sought from the Chair or a Vice-Chair of the Discipline Committee for authority to conduct an in-depth investigation. (Chart 4 & 5)	7	N/A	7.9%	1	6
Inadequacies of a nature that did not warrant a current investigation because of corrective action taken. eg. messy record keeping. A new audit will be sought in 6 months. (Chart 6 & 7)	1	N/A	1.1 %	0	1
Inadequacies which require follow-up by the Society to ensure the member continues to comply with the Regulation. Letter to members requesting proof of continued compliance sought eg. submit copies of monthly trust comparisons. (Chart 6 & 7)	25	N/A	28.1%	12	13
Inadequacies of a minor nature that require no further action. (Chart 8 & 9)	51	N/A	57.3%	38	13
No inadequacies	5	N/A	5.6%	5	0
The audit had not yet been conducted at the time of this report.	10	10%	N/A	2	8
Total	99	100%	100%	58	41

Inadequacies of a Serious Nature

21. The seven law firms, 7.9 % of the audits conducted, where inadequacies of a serious nature were found, were located geographically as follows:

Chart 4

Geographic Area	Number of Law Firms	Size of Law Firm Sole	Partner
North Ontario	0	0	0
South Ontario	3	2	1
East Ontario	0	0	0
West Ontario	0	0	0
GTA (Greater Toronto Area)	4	4	0
Total	7	6	1

22. The nature of the serious inadequacies or conduct with respect to the seven firms is outlined at Chart 5 as follows:

Chart 5

Nature of Serious Inadequacy or Conduct	Number of Law Firms as Selected Due to Non Filing Status, by Geographic Area All Sole Practitioner
Two sets of trust records.	GTA (1) FF
Failed to prepare trust reconciliations & comparisons. (*)	GTA (1)(FF) South (2) (FF)
Significant instances of member pre-taking fees without issuing billing, or immediate pre-taking of fees upon receipt of retainers. (*)	South (1) (Random)
Operating trust through general account.	GTA (2) (FF)

*Will be escalated to a Focused Auditor as no misconduct is suspected. Focused Auditor will provide assistance to the member to bring his/her books into compliance with Regulation 708.

Inadequacies of a Minor Nature Requiring Future Action

23. Twenty six or 29% of the 89 audits completed fall into this category. The audit of these firms was concluded by satisfactory remedial action. The firms in this category exhibited a lack of attention or proper record keeping (messy records), although the integrity of trust money was NOT compromised at any time, or, records were not maintained on a current basis and were brought up-to-date because of the audit. Typically, the audit visitation was deferred by a short period of time in order to allow the firm to take efforts, at its expense, to make the firm's financial records current and complete. Chart 6 and Chart 7 outline the details with regard to these findings.

Chart 6

Nature of Minor Inadequacy	Instances	Number of Law Firms and Geographic Distribution					Size of Law Firm		Random	None Filer
		North	South	East	West	GTA	Sole	Partner		
Inactive trust ledger accounts whose balances have remained unchanged over long periods.	22	2	2	2	7	9	17	5	10	12
Not all client trust ledger accounts were included in trust list or client trust balances per the client trust ledger do not agree to the trust list.	9	0	1	0	1	7	9	0	4	5
Earned fees held in the trust account	9	0	1	0	4	4	8	1	2	7
Trust bank reconciliations have contained the same uncorrected reconciling items from month to month	9	0	1	0	3	5	8	1	3	6
General Cash Receipts Journal not entered and posted currently.	9	1	0	0	2	6	9	0	4	5
General Cash Disbursements Journal not entered and posted currently.	9	1	0	0	2	6	9	0	4	5

Chart 7

Frequency of Multiple Inadequacies	Total Firms For the Range	Number of Law Firms Sole	Partner	Random	None Filer
1 to 3	3	2	1	2	1
4 to 5	8	4	4	5	3
6 or More	15	15	0	6	9

Inadequacies of a Minor Nature

24. With respect to the 89 audits completed, 51 law firms were found to have trust accounting record inadequacies of a minor nature. The members received on-site written guidance with respect to corrective action. The most frequent five minor inadequacies found with respect to the 51 law firms were as follows:

Chart 8

Nature of Minor Inadequacy	Instances	Number of Law Firms and Geographic Distribution					Size of Law Firm		Random	Non Filer
		North	South	East	West	GTA	Sole	Partner		
Inactive trust ledger accounts whose balances have remained unchanged over long periods.	32	0	1	2	7	22	23	9	26	6
Trust bank reconciliations have contained the same uncorrected reconciling items from month to month	20	0	1	0	3	16	13	7	15	5
Earned fees held in the trust account	9	2	1	0	2	4	9	0	6	3
Transfers from trust to general on account of fees without first delivering a billing	8	0	0	2	3	3	6	2	5	3
The clients' general ledger accounts contained accounts in credit balances.	8	0	0	1	2	5	5	3	8	0

Chart 9

Frequency of Multiple Minor Inadequacies	Total Firms For Each Range	Number of Law Firms		Random	Non Filer
		Sole	Partner		
1 to 3 Inadequacies	29	24	5	20	9
4 to 5 Inadequacies	9	8	1	5	4
6 or More Inadequacies	13	9	4	12	1

E. SPOT AUDIT COST ANALYSIS

25. The cost to conduct the 89 audits was $103,500.00, based on actual costs and estimates received to date. Some final billings have not been received. The amounts are distributed as follows:

Chart 10

Geographic Area	Cost of Spot Audits
North	$ 6,500
South	$ 7,000
East	$ 7,000
West	$ 19,000
GTA	$ 64,000
Total	$ 103,500

F. POST AUDIT MEMBER SURVEY RESULTS

26. In order to continually measure the effectiveness of the spot auditors and the spot audit program, each audited law firm was asked to voluntarily complete a survey after the completion of the audit. Forty three member surveys were returned by the date of this report and reflect the following:

Chart 11

Nature of Survey Question	Favourable Responses Number	Percentage	Unfavourable Responses Number	Percentage
Was the spot auditor courteous, considerate and helpful?	42	98%	1	2%
Do you agree with the policy of making an advance appointment for purposes of conducting a spot audit?	43	100%	0	0%
Do you agree with the policy of receiving an advance listing of the books and records which must be produced on the day of the spot audit?	38	88%	5 (4-Negative response) (1-Did not respond)	11.6%
Do you agree that being provided with a post audit report which outlines minor records keeping inadequacies, and provides suggested remedies, is helpful?	38	88%	5 (2-Negative response) (3-Did not respond)	11.6%
Did you find the spot audit process constructive? (By enhancing knowledge of record keeping requirements)	30	70%	13 **(12-negative responses) (1-did not respond)	30%
Do you agree that the spot audit process is an appropriate accompaniment to the lawyer self reporting financial form model?	35	81%	8 (6 negative responses) (2-did not respond)	19%

II. SUMMARY OF RESULTS OF ALL SPOT AUDITS COMPLETED IN 1998

A. OVERVIEW

27. This report summarizes of the results of the spot audits completed in 1998 to the date of this report.[4]

28. Three separate "cycles" of spot audits were performed in 1998. The basis of selection of firms subject to the first 150 spot audits was random selection of 142 audits and eight audits on the basis of the firm's failure to file a financial report (Private Practitioner's Report) with the Law Society.

29. The second and third selections, totalling 250 audits, were initially selected based on one-half selected on a random basis and one-half selected on the basis of the firm's failure to file a Private Practitioner's Report. Because of an inability to currently audit some firms initially selected, replacement audits were authorized. This substitution process created an imbalance to the equal selection process.

[4]The report was prepared on December 18, 1998.

30. Although 400 spot audits were approved and selected, only 386 spot audits were completed by December 11, 1998. Of those not yet completed, 13 law firms were permitted to bring records fully up to date prior to the commencement of the audit. Appointments were being made with 11 of these firms to conduct the audit by the end of December, 1998. With respect to two firms, no firm appointments have been made to date. With respect to the remaining one firm, the audit was cancelled during the week of December 7, 1998 as the member was hospitalized. Given the late date, this audit was not replaced with another selection, therefore this report only reports on 399 audits.

B. RESULTS SUMMARY

31. Three hundred and twenty seven law firms or 85% of the 386 spot audits conducted detected some form of trust accounting records inadequacies or other conduct which requires further investigation. The breakdown with respect to the 327 law firms is as follows:

- 7%, or 26 audits, were of a nature which gave rise to a subsequent request to conduct a more in-depth investigation. Eighteen firms in this group are "fail to file" firms and eight firms are by random selection;
- 78%, or 301 audits, were dealt with by providing administrative guidance.

32. The average cost for each spot audit is $1,000.00.

C. THE LAW FIRM SELECTION PROCESS

Firms - Geographic Area

33. The geographic location of selected law firms were as follows:

Chart 1

Geographic Area	Number of Total	Number of Law Firms Randomly Selected	Number of Law Firms Selected Because of Non Filer Status
North Ontario	15	11	4
South Ontario	38	24	14
East Ontario	55	45	10
West Ontario	65	47	18
GTA (Greater Toronto Area)	226	149	77
Total	399	276	123

Firms - By Firm Size

34. Law firms, by size, selected for spot audit, were as follows:

Chart 2

Firm Size	Number of Firms in Ontario	
Sole Practitioner	342 Firms	86 %
Partnership - 2 to 10 Partners	57 Firms	14%

D. SPOT AUDIT FINDINGS

35. Findings with respect to the completed 386 audits, about 5.5 % of all Ontario law firms, are summarized as follows:

Chart 3

	Total	% of 399 Firms	% of 386 Firm	Random Selection	Non Filer
Trust accounting records inadequacies of a serious nature, or other conduct which requires further investigation, and for which authority was sought from the Chair or a Vice-Chair of the Discipline Committee for authority to conduct an in-depth investigation. (Chart 4 & 5)	26	N/A	7%	8	18
Inadequacies of a nature that did not warrant a current investigation because of corrective action taken. eg. messy record keeping. A new audit will be sought in 6 months. (Chart 6 & 7)	17	N/A	4%	2	15
Inadequacies which require follow-up by the Society to ensure the member continues to comply with the Regulation. Letter to members requesting proof of continued compliance sought eg. submit copies of monthly trust comparisons. (Chart 6 & 7)	53	N/A	14%	25	28
Inadequacies of a minor nature that require no further action. (Chart 8 & 9)	231	N/A	60%	191	40
No inadequacies	59	N/A	15%	52	7
The audit had not yet been conducted at the time of this report.	13	3%	N/A	2	11
Total	399	100%	100%	280	119

Inadequacies of a Serious Nature

36. The 26 law firms, or 7 % of the audits conducted, where inadequacies of a serious nature were found, were located geographically as follows:

Chart 4

Geographic Area	Number of Law Firms	Size of Law Firm	
		Sole	Partner
North Ontario	1	0	1
South Ontario	5	4	1
East Ontario	1	1	0
West Ontario	3	3	0
GTA (Greater Toronto Area)	16	15	1
Total	26	23	3

37. The nature of the serious inadequacies or conduct with respect to the twenty six (26) firms is outlined in Chart 5 as follows:

Chart 5

Nature of Serious Inadequacy or Conduct	Number of Law Firms as Selected Randomly, by Geographic Area	Number of Law Firms as Selected Due to Non Filing Status, by Geographic Area
Misappropriation (one (1) instance of greater than $100,000 and one (1) instance of $1,500)	None	GTA (1) West (1) (2 sole practice)
Failure to maintain trust accounting records for a continuous period in excess of six (6)months.	GTA (3) (2 sole practice and 1 small partnership firms)	GTA (4) South (3) (5 sole practice firms)
Failed to prepare trust reconciliations & comparisons.	None	GTA (1) South (2) (3 sole practice)
Two sets of trust records.	None	GTA (1) (sole practice)
Operating trust through general account.	None	GTA (2) (2 sole practice)
Significant instances of member pre-taking fees without issuing billing, or immediate pre-taking of fees upon receipt of retainers.	GTA (1) East (1) South (1) (3 sole practice firms)	South (1) (1 sole practice)

Nature of Serious Inadequacy or Conduct	Number of Law Firms as Selected Randomly, by Geographic Area	Number of Law Firms as Selected Due to Non Filing Status, by Geographic Area
Failure to Serve Clients - Rule 2, related to significant instances of failure to register mortgage discharges.	GTA (1), North (1) (1 sole practice and 1 small partnership firms)	None
Failure to keep spot audit appointment, make arrangements for alternate audit date, and failure to produce trust accounting records.	None	GTA (2) West (1) (3 sole practice firms)

Inadequacies of a Minor Nature

38. Three hundred and one, or 78%, of the 386 audits completed fall into the category of inadequacies of a minor nature. Each of the 301 audits was concluded by satisfactory remedial action. The firms in this category exhibited some lack of attention to proper record keeping (messy records), although the integrity of trust money was NOT compromised at any time, or, records were not maintained on a current basis and were brought up-to-date because of the audit. Typically, the audit visitation was deferred by a short period of time in order to allow the firm to take efforts, at its expense, to make the firm's financial records current and completed.

39. Seventy of these audits require some degree of future action, usually submission of monthly trust comparisons to the Law Society for a specified period of time.

40. Two hundred and thirty one of these audits were found to have trust accounting inadequacies of a minor nature. In these audits, the members received on-site written guidance with respect to corrective action.

41. The most frequent four minor inadequacies found with respect to the 301 law firms are outlined in Chart 6.

Chart 6

Nature of Minor Inadequacy	Number of Instances	Size of Law Firm Sole	Size of Law Firm Partner	Random	None Filer
Inactive trust ledger accounts whose balances have remained unchanged over long periods.	192	150	42	137	55
Transfer from trust to general on account of fees without first delivering a billing.	68	57	11	48	20
Earned fees held in the trust account	85	76	9	52	33
Trust bank reconciliations have contained the same uncorrected reconciling items from month to month	96	80	16	58	38

E. SPOT AUDIT COST ANALYSIS

42. The cost to conduct the 386 audits was $393,000.00, based on actual costs and estimates received to date. Some final billings have not been received. The amounts are distributed as follows:

Chart 7

Geographic Area	Cost of Spot Audits
North	$ 20,000
South	$ 38,000
East	$ 52,000
West	$ 64,000
GTA	$ 219,000
Total	$ 393,000

F. POST AUDIT MEMBER SURVEY RESULTS

43. In order to continually measure the effectiveness of the spot auditors and the spot audit program, each audited law firm was asked to voluntarily complete a survey after the completion of the audit. Two hundred and seven surveys were returned by the date of this report and reflect the following:

Chart 8

Nature of Survey Question	Favourable Responses Number	Percentage	Unfavourable Responses Number	Percentage
Was the spot auditor courteous, considerate and helpful?	207	99%	2	1%
Do you agree with the policy of making an advance appointment for purposes of conducting a spot audit?	207	99%	2	1%
Do you agree with the policy of receiving an advance listing of the books and records which must be produced on the day of the spot audit?	196	94%	13	6%
Do you agree that being provided with a post audit report which outlines minor records keeping inadequacies, and provides suggested remedies, is helpful?	178	85%	31	15%
Did you find the spot audit process constructive? (By enhancing knowledge of record keeping requirements)	137	66%	72	34%
Do you agree that the spot audit process is an appropriate accompaniment to the lawyer self reporting financial form model?	168	80%	41	20%

III. RESULTS OF FOCUSED AUDITS COMPLETED IN 1998

44. This report summarizes of the results of the focused audits conducted in 1998 to the date of this report.[5]

45. The focused audits are conducted in teams of two, one examiner and one auditor. Due to hiring challenges, the program did not commenced until July 1998, with one audit team. A second team was in place October 1998.

46. Lawyers selected for a focused audit include members in private practice who fit within the "profile" approved by Convocation.

47. Focused audits are based on a member, not a firm, but once a member is selected, if he/she is a partner in a firm, the Private Practitioner Reports of his/her partners are reviewed to determine if these partners meet any of the profile factors that gave rise to the audit. For those partners that do have relevant profile factors, authorization is sought to audit all the partners, as part of the audit of the firm.

48. A computer program has been developed to select members by risk profile. The audits completed to date focused on members with significant private mortgage activity.

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[5]December 18, 1998.

A. FOCUSED AUDIT FINDINGS

49. Focused audits of 29 law firms have been completed in the period July to November 1998. The 29 firms audited represent 68 members for which authorization was sought due to private mortgage activities.

50. The results of the completed audits are summarized on the following chart:

Chart 1

	Number of Firms	Number of Law Firms and Geographic Distribution					Size of Law Firm	
		North	South	East	West	GTA	Sole	Partner
Trust accounting records inadequacies of a serious nature, or other conduct which requires further investigation, and for which authority was (or will be) sought from the Chair or a Vice-Chair of the Discipline Committee for authority to conduct an in-depth investigation.	3			1	1	1	2	1
Inadequacies of a nature that did not warrant an investigation because of corrective action taken. eg messy record keeping. A new audit will be sought in 6 months.	1	1					0	1
Inadequacies of a minor nature that require no further action.	19	12	3	1	3		7	12
No inadequacies	6					6	1	5

ADR PILOT PROJECT INFORMATION UPDATE - IMPLEMENTATION PLANNING

51. The ADR pilot project is set to launch in January 1999. The following report was provided to the Committee by Felecia Smith, a member of the ADR Systems Design Team.

Introduction

52. As stated in the ADR report and as approved by Convocation in September 1998, extensive use of two common ADR tools - negotiation and mediation - will be used to resolve issues arising from various aspects of the Law Society's regulatory mandate. Negotiation will be conducted by internal staff, with the approval of the complainant (where applicable) and member. If the negotiation proves unsuccessful, mediation will be conducted by external third party mediators, if the parties consent.

Regulatory Departments Involved

53. Negotiation and mediation will be offered in both the Audit and Complaints Departments (specifically the Complaints Investigation Unit and Discipline Investigations Unit). Mediation will be piloted in discipline and the practice review program through the Professional Standards Department.

54. Mediation *only* will be measured in discipline and the practice review program. In these latter areas, it was believed that because much of the process itself is already negotiative, there would be little added value in any quantitative or qualitative measurement.

File Selection

55. The pilot project will only measure new files assigned commencing in January 1999. Files will be assigned to staff in the normal course and will not be pre-screened or selected simply because they appear to lend themselves toward ADR. The difference from current practise is that the individuals who have been selected to participate in the ADR project will utilize negotiation on ALL their files. It is anticipated that there will be approximately 600 files included in the pilot.

Staff Selection

56. A representative group of staff from both Complaints and Audit & Investigation have been selected to participate in the pilot project. These participants attended the Stitt, Feld, Handy training course from December 1 - 4, 1998. Each attendee received a Certificate of Achievement from the University of Windsor for completion of the ADR workshop.

Case Tracking

57. An electronic tracking system which will meet both the reporting requirements and work processes of the pilot project will be built in a Microsoft database named Access, which can be easily migrated to Oracle, the facility for the new member database and case tracking system. All participants in the pilot project will be able to utilize one tracking system.

Performance Measures

58. The success of the pilot project will be measured both qualitatively and quantitatively. The measures were established by a working group that included Larry Banack, Alan Stitt, Kathleen Kelly (mediator), Marv Bernstein (Chief Counsel, CAS and mediator), Fern Sager and Michael Miller (Osgoode LL.M. students). The assessment tools will include exit surveys, exit interviews and an information form to be completed by staff.

Mediators

59. An advertisement calling for applications from mediators appeared in the *Ontario Reports* commencing on November 30, 1998 and running for three consecutive weeks. A total of 120 applications have been received from both lawyers and non-lawyer mediators. There were approximately 70 lawyer applicants and ten non-lawyer applicants with mediation experience. These applications will be closely scrutinized and selection criteria determined in order to present the final roster of mediators. Larry Banack and Alan Stitt will be part of the selection process. In early February 1999, there will be a half day information session about the Law Society for those mediators selected.

Ombudsperson

60. The ADR report approved the establishment of an Ombudsperson, as an alternative to the Law Society's investigative processes, to deal with matters of harassment and discrimination. Charles Smith, who has recently joined the Law Society as Equity Advisor, has kindly agreed to oversee this selection process.

Proceedings Authorization Committee ("PAC") [6]

The ADR report contemplates that the role of the PAC will be "expanded and diversified" as a result of the use of ADR. In addition to considering recommendations based on a fairly limited number of options (e.g. formal complaint, Invitation to Attend, Letter of Advice, closing the file, etc.), the PAC will also decide in many cases whether to "divert" cases that would have previously resulted in formal proceedings into alternative procedures designed to correct problems identified during the investigative stage.

61. The use of negotiation and mediation is intended to promote this expanded role for the PAC by producing settlements which supplement the limited range of options previously available. The PAC will be an integral part of the pilot project in terms of setting policy and parameters for the ADR process.

Future Reports

62. This report is the first of several which the Committee will receive during the pilot project. Future reports will highlight recent developments and 'interim' assessments based on the performance measures which have been established.

.....

Limited Liability Partnerships

It was moved by Mr. Ruby, seconded by Mr. Topp that the Treasurer be authorized to establish and populate a committee chaired by Mr. Krishna to deal with the issue of limited liability partnerships.

Carried

Report of the Professional Development and Competence Committee

Mr. Banack advised that he had had an opportunity to speak to the Chair Ms. Eberts and suggested the following amendments which were accepted by Convocation:

Page 4, paragraph 9 (a) - that the first line be deleted up to the word "fees" so that the paragraph would then read:

> "The Law Society will distribute to each county library the amount of money representing the 1999 budgeted library fee portion of the association fees and retain any excess for emergencies and/or the implementation of the new system."

Page 4, paragraph 9 (b) ii)that the words after the word "allocation" be deleted so that the sentence would then read:

> "explain the method by which the money is being allocated and the reasons underlying that allocation"

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[6]The PAC, pursuant to amendments to the *Law Society Act* in force February 1, 1999, is the successor to the Discipline Authorization Committee, but with an expanded mandate which will be defined in the by-laws under the amended *Act*.

Page 5, paragraph 9 (b) v)that the second sentence beginning with the words "This is reflective of the reduction....." be deleted. The paragraph would then read:

"encourage the counties to open their libraries to all Law Society members and not just those who are members of the association."

THE REPORT AS AMENDED WAS ADOPTED

MOTION - CBA-O/CDLPA

Moved by: A. Feinstein
Seconded by: G. Swaye

That the Law Society Act be amended to give the Law Society the power to:

(1) require members to belong to the Canadian Bar Association and a County or District Law Association: and

(2) act as agent of the Canadian Bar Association and the County and District Law Associations for the purpose of collecting fees of those organizations from members of the Society.

.....

It was moved by Mr. Adams, seconded by Mr. Scott that the question "Do you support the concept of mandatory memberships in CBA-O/CDLPA with mandatory check-off" be added to the ballot.

It was moved by Mr. Ruby, seconded by Ms. Curtis that the Adams/Scott motion be tabled.

Carried

It was moved by Mr. Wilson, seconded by Mr. Manes that the Feinstein/Swaye motion be tabled to allow the Canadian Bar Association and County and District Law Association to come to Convocation and make submissions.

Carried

ROLL-CALL VOTE

Aaron	Against
Adams	Against
Armstrong	For
Carey	Against
Chahbar	For
Cole	Against
Copeland	For
Crowe	For
Curtis	For
Feinstein	Against
Gottlieb	For
Keenan	Abstain
Lamek	For
MacKenzie	Against

Manes	For
Millar	For
Murphy	Against
Puccini	For
Ruby	For
Scott	Against
Swaye	Against
Topp	For
Wilson	For
Wright	For

NOTICE OF MOTION

MOVED BY: Bob Aaron

SECONDED BY:

That the Bencher Code of Conduct be amended by adding the following:

1.7 Benchers' conduct toward other Benchers during Convocation should be characterized by courtesy and good faith. Benchers shall not attack or criticize other Benchers personally during debate at Convocation.

COMMENTARY TO SECTION 1.7

Any ill feeling which may exist or be engendered between Benchers should never be allowed to influence Benchers in their conduct and demeanour toward each other during debate. The presence of personal animosity between Benchers during debate may cause their judgment to be clouded by emotional factors and hinder the business of Convocation. Personal remarks or personally abusive tactics interfere with the orderly course of Convocation's business, and have no place in Convocation.

CONVOCATION ROSE AT 3:30 P.M.

Confirmed in Convocation this 19 day of February 1999.

Harvey T. Strosberg

Treasurer