

MINUTES OF CONVOCATION

Friday, 25th June, 1993  
9:00 a.m.

PRESENT:

Acting Treasurer (Roger Yachetti), Bastedo, Bellamy, Bragagnolo, Brennan, Campbell, Carter, R. Cass, Cullity, Elliott, Epstein, Farquharson, Feinstein, Finkelstein, Furlong, Goudge, Graham, Hill, Howland, Jarvis, Kiteley, Lamek, Lamont, Lawrence, Lax, Legge, Levy, McKinnon, Manes, Mohideen, Murphy, Murray, S. O'Connor, Palmer, Peters, Richardson, Scott, Sealy, Somerville, Strosberg, Thom, Topp, Wardlaw and Weaver.

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IN PUBLIC

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MOTION - ANNUAL MEETING

It was moved by Neil Finkelstein, seconded by Laura Legge THAT the next Annual Meeting be held on Wednesday, November 10, 1993 at 5:00 p.m. in Convocation Hall at Osgoode Hall.

Carried

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MOTION - COMMITTEE REPORTS TO BE TAKEN AS READ

It was moved by James Wardlaw, seconded by Netty Graham THAT the Reports listed in paragraph 3 of the Agenda (Reports to be taken as read), be adopted.

Carried

- Admissions (2 Reports)
- Bicentennial
- Clinic Funding
- Communications
- County and District Liaison
- Discipline Policy
- Equity in Legal Education and Practice
- Finance and Administration
- French Language Services
- Insurance (2 Reports - 1 in camera)
- Investment
- Lawyers Fund for Client Compensation
- Legal Aid
- Legal Education (2 Reports)
- Legislation and Rules
- Libraries and Reporting
- May Convocation Minutes
- Professional Conduct
- Professional Standards
- Specialist Certification Board
- Unauthorized Practice
- Women in the Legal Profession

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25th June, 1993

CLINIC FUNDING COMMITTEE

Meeting of June 14, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of LEGAL AID begs leave to report:

CLINIC FUNDING

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

The Director recommends to Convocation that the report of the Clinic Funding Committee dated June 16, 1993 be adopted.

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

ALL OF WHICH is respectfully submitted

Robert L. Holden,  
Director,  
Legal Aid

June 16, 1993

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

The Clinic Funding Committee met on June 14, 1993. Present were: Philip Epstein, Q.C., Chair, Joan Lax, Jim Frumau, Thea Herman and Pamela Giffin. Also present: Joana Kuras, Clinic Funding Manager.

A.  
POLICY

Nil

B.  
ADMINISTRATION

1. Purchase of PCs

The Clinic Funding Committee recommends Convocation's approval of the purchase of 11 additional PCs, in an amount up to \$21,000, as follows:

Algoma Community Legal Clinic	1
Community Legal Assistance Sarnia	1
Community Legal Services of Niagara South	2
Dundurn Community Legal Services	1
Downsview Community Legal Services	1
Neighbourhood Legal Services (London & Middlesex)	2
Waterloo Region Community Legal Services	2
Clinique juridique SDG Legal Clinic	1
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	11

2. Additional Funding re. Metro Toronto Chinese & Southeast Asian Legal Clinic

Due to an error in the allocation of funds to the Metro Toronto Chinese & Southeast Asian Legal Clinic in 1992/93, an additional \$2,942 is required in 1993/94 for the Metro Toronto concentration tax and hydro expenses. The Committee therefore recommends Convocation's approval of this additional funding.

C.  
INFORMATION

The Clinic Funding Committee reviewed the reports of the Family Law Pilot Project Design Team and Immigration Pilot Project Sub-Committee. The Committee agreed with the establishment of the recommended clinics, women's law centre, undefended divorce clinic and immigration clinic.

All of which is respectfully submitted

"P. Epstein"  
Philip Epstein, Q.C.  
Chair, Clinic Funding Committee

June 16, 1993

THE REPORT WAS ADOPTED

COMMUNICATIONS COMMITTEE

Meeting of June 10, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of June, 1993, the following members being present: Denise Bellamy (Chair), Susan Elliott, Allan Lawrence, Ross Murray, and Stuart Thom. Also in attendance: Nancy Bath, Theresa Starkes and Gemma Zecchini.

C.  
INFORMATION

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1. Client Information System

Last year, the Communications Committee approved the development of a series of brochures to be marketed through lawyers' offices which would address common issues that arise between lawyers and clients and the steps that can be taken by clients to build a successful relationship with their lawyer.

The Complaints and Professional Standards departments, in addition to four non-bencher barristers and solicitors, two of whom have served as peer reviewers for the Society's Standards Program, have collaborated with the Communications Department and Manifest Communications over the past eight months to produce four brochures entitled: Lawyers and Clients: A guide to a successful relationship; When you see your lawyer about making a will; When you see your lawyer about buying a home; When you see your lawyer about ending your marriage.

Copies of the text of the brochures were distributed at the meeting for review by individual committee members who were asked to provide their comments by June 18th.

2. Call Statistics

Lawyer Referral Service call statistics from January 1, 1993 to May 31, 1993 totalled 78,115 calls or 744 calls per day. Calls for the same period for the Dial-A-Law program totalled 151,401 calls or 1,005 calls per day.

3. Dial-A-Law

Convocation is advised that Dial-A-Law call volumes have been decreasing steadily since March when we began implementing measures to restrict costs. Bell Canada invoices are beginning to reflect the success of these efforts. The most recent Bell invoice showed that wats charges had dipped to \$15,000 down from the \$22,000 in charges which the service had been incurring during the fall and winter months. Further measures will be necessary to bring charges down to the \$10,000/month level required to meet fiscal 1994 budget targets. Accordingly, on June 9th service hours were restricted to 8:00 am - 6:00 pm, seven-days-per-week. In addition, the Communications Department, on the recommendation of the Finance Department, retained the services of the DMR Group which specializes in the forecasting of wats usage and costs. The consultant will develop a report outlining the options available for reducing wats costs to the necessary levels.

4. LRS Advertising Campaign

The newspaper advertising campaign for the LRS was launched on May 17th. A copy of the media buy schedule was distributed to the Committee. The total monthly call rate for May 1993 increased by 700 calls compared to May 1992. Statistics regarding call volumes and fees generated by referrals will be monitored closely to establish benchmarks for the success of the campaign. A report will follow in September.

The Communications Department has received a number of calls from lawyers in various communities who have expressed their approval of the advertising campaign. Committee members and other benchers are asked to contact Communications if they are aware of any concerns or comments members of the profession may have regarding the campaign. Staff will follow up on these matters as soon as they arise.

5. Media Activity

Media statistics for the month of May indicate the following issues in order of priority: discipline, access to the legal profession (women), lawyers and the economy, legal aid, lawyers' fees, access to the legal profession (minorities), lawyers and quality of life, legal clinics, professional conduct, paralegals and women in the legal profession.

6. LRS Revenue/Panel Membership

LRS panel membership revenue reached \$174,800 on June 4, 1993. Therefore, \$174,800 less 7% GST (\$163,373.01) will be deposited into the LRS revenue account. LRS panel membership has now reached 3,496 members.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"D. Bellamy"  
Chair

THE REPORT WAS ADOPTED

COUNTY AND DISTRICT LIAISON COMMITTEE

Meeting of June 10, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of June 1993 at 11:30 a.m., the following members being present: R. Bragagnolo (Chair), D. Bellamy, C. Campbell, A. Feinstein and A. Lawrence. The following members of the County and District Law Presidents' Association Executive were also in attendance: H. Arrell, N. DiGiuseppe, S. Foley, R. Gates, M. Hennessy, M. Hornseth, D. Lovell, J. Morissette and M. O'Dea. Staff in attendance were: M. Angevine, G. Howell and A. John (Secretary).

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1. RESOLUTIONS PASSED AT MAY 1993 PLENARY

The following Resolutions were passed at the May Plenary and were tabled with this Committee for distribution to the appropriate Committees of Convocation so that they might appear on the agenda for the next Committee meeting for discussion.

- (a) Resolution opposing the use of checklists as standards of practice and calling instead for guidelines which could serve an educative function.

- (b) Resolution endorsing amendments to Forms 4 and 5 as proposed by the Lawyers' Fund for Client Compensation Committee and suggesting further amendments thereto.
- (c) Resolution calling for mandatory membership in County or District Law Associations.
- (d) Resolution endorsing the initiatives of the Law Society in preserving traditional library services with respect to copying and facsimile transmissions.
- (e) Resolution calling for an increase of \$5.00 in the County Library levy and for an increase in local fees.
- (f) Resolution calling for the establishment of a subcommittee to review the "Basic List" and to report back to the November Plenary.
- (g) Resolution opposing any claim for compensation or royalties arising out of the photocopying of law reports.
- (h) Resolution calling for the establishment of continuing legal education through County Law Associations.
- (i) Resolution calling for a "full regional representation system" in Benchers election and the development of a protocol for evaluating the performance of all Benchers.
- (j) Resolution supporting the principle that judges of any new Unified Family Court should be allowed to rotate through the General Division.
- (k) Resolution asking that any new Unified Family Court System should not restrict access through a centralization process.
- (l) Resolution that the proposed Family Law Check List be rejected.

2. FAMILY LAW CHECK LISTS

The County and District Law Presidents' Association discussed the use of the draft Family Law Check Lists. The Association was of the view that the Check Lists be accepted only for purposes of education and not as a measure of professional competence. It was suggested that the revisions to Rule 2 of the Rules of Professional Conduct should address all issues related to standards.

25th June, 1993

3. NOVEMBER 1993 PLENARY

The Committee discussed the possibility of changing the dates for the November Plenary from Thursday, November 11, and Friday, November 12, 1993 to Wednesday, November 10 and Thursday, November 11, 1993.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"R. Bragagnolo"  
Chair

THE REPORT WAS ADOPTED

FRENCH LANGUAGE SERVICES COMMITTEE

Meeting of June 10, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of June, 1993 at 11:30 a.m. The following members attended the meeting: P.J. Peters (Chair), P. Copeland, T. Keith (CBAO) and G. Cortis (Legal Aid). Staff representation: D. A. Crosbie, A. Treleaven, H. Harris, B. Duncan and C. Wackermann (Secretary).

B.  
ADMINISTRATION

1. Amendments to the Rules made under Subsection 62(1) of the Law Society Act

The Legislation and Rules Committee has asked that your Committee review the amendments made to the French version of Rules under Subsection 62(1) of the Law Society Act. The French version of these rules was updated by the in-house translator in Toronto, Ms. D. Picouet.

The French version was approved by the Committee.

C.  
INFORMATION

25th June, 1993

1. Request from Susan DiGrappa to sit on the French Language Services Committee

Your Committee reviewed the request made by Ms. DiGrappa, a claims examiner in the Errors and Omissions Department, to sit on the French Language Services Committee.

The Committee praised Ms. DiGrappa's interest in the development of French services, but felt that her participation should be limited to acting as a liaison between the Errors and Omissions Department and the Committee when required, in accordance to Law Society guidelines on committee membership.

2. French Continuing Legal Education courses 93-94

The Law Society will chair the next French Continuing Legal Education course organized jointly by the Society, AJEFO and the CBAO, as previously agreed upon. The course will likely take place in the spring of 94 at a location yet to be determined. The Committee is pleased to note that there is good cooperation among the various Francophone law- organizations to provide quality continuing education in a cost-effective manner.

3. Bilingual Staff Human Resources Policy

The Committee approved, on an interim basis, a new Human Resources Policy to be implemented immediately by the Society. The complete policy will be presented to the Committee in September for approval. A copy of the interim policy is attached.

The meeting was adjourned at 12:55 p.m.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"P. Peters"  
Chair

AUX MEMBRES DU CONSEIL DU BARREAU DU HAUT-CANADA

RÉUNIS EN ASSEMBLÉE

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

Le Comité s'est réuni le jeudi 10 juin 1993 à 11 h 30. Les membres suivants étaient présents P.J. Peters (présidente), P. Copeland, T. Keith (ABCO) et G. Cortis (Aide juridique) et représentant le personnel, D.A. Crosbie, A. Treleaven, H. Harris, B. Duncan et C. Wackermann (secrétaire).

B.  
ADMINISTRATION

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1. Révision des règles de l'article 62(1) de la Loi sur le Barreau

Le Comité de la législation et de la réglementation a demandé au Comité de revoir les changements apportés à la version française des Règles de l'article 62(1) de la Loi sur le Barreau. La version française des règles a été mise à jour par la traductrice du Barreau à Toronto, Mme D. Picouet.

Le Comité a approuvé la version française des Règles.

C.  
INFORMATION

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1. Demande présentée par Susan DiGrappa de participer au Comité des services en français

Le Comité a examiné la demande présentée par Mme DiGrappa, enquêtrice au Service de responsabilité civile professionnelle, de participer au Comité des services en français.

Le Comité félicite Mme DiGrappa de l'intérêt qu'elle porte à la mise en oeuvre des services français, mais estime que sa participation devrait se limiter à un rôle de liaison entre son département et le Comité, selon les besoins et ce conformément aux directives de participation aux comités tracées par le Barreau.

2. Cours de formation continue juridique en français 93-94

Le Barreau administrera la prochaine session de formation continue juridique en français organisée conjointement par le Barreau, l'AJEFO et l'ABCO. Le cours aura lieu sans doute au printemps 94, à un endroit qui reste à déterminer. Le Comité se réjouit des efforts de collaboration entrepris par les divers organismes juridiques francophones dans le but d'offrir des programmes de formation continue rentables et de bonne qualité.

3. Politique de ressources humaines sur les services en français

Le Comité a approuvé une nouvelle politique de ressources humaines sur une base intérimaire. La politique entre en vigueur immédiatement. La politique complète sera présentée au Comité en septembre aux fins d'approbation. Un exemplaire de la politique intérimaire est jointe au rapport.

La séance a été levée à 12 h 55.

FAIT le 25 juin 1993.

La présidente,

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

C-Item 3 - Interim Manual of Staff Policies.

(Pages 1 - 9)

THE REPORT WAS ADOPTED

25th June, 1993

INVESTMENT COMMITTEE

Meeting of June 10, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of June, 1993 at two-thirty in the afternoon, the following members being present: Messrs. Wardlaw (Chair). Staff members present were David Crack and David Carey.

B.  
ADMINISTRATION

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1. Investment Report

The Deputy Director of Finance presented to the Committee an investment report summary for the various Law Society Funds for the month ended May 31, 1993 (Schedule A).

Approved

2. Other Matters

In order to ensure the continuity of Errors and Omissions Fund claim payments until the maturity of short term securities and receipt of the second half levies, the Committee was asked to approve the formalization of a line of credit at a maximum amount of \$6,000,000 and referred the matter to Finance and Administration Committee.

Approved

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"J. Wardlaw"  
Chair

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

B-Item 1 - Investment Report Summary for the various Law Society Funds for the month ended May 31, 1993.

(Schedule A)

THE REPORT WAS ADOPTED

25th June, 1993

MAY CONVOCAATION MINUTES

Draft Minutes of May 27th and 28th, 1993

Approved

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of June 10, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of June, 1993 at 10:30 a.m., the following members were present: D. O'Connor (Chair), R. Cass, P. Copeland, G. Farquharson, N. Finkelstein, N. Graham, M. Hickey and M. Weaver. Also in attendance was: A. John (Secretary)

B  
ADMINISTRATION

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1. COMPLAINTS/INVESTIGATIONS

Two further investigations were authorized.

2. CONDOMINIUM MANAGERS

This matter was put over until the September 9, 1993 meeting.

ALL OF WHICH is respectfully submitted

DATED the 25th day of June, 1993

"D. O'Connor"  
Chair

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

List of Prosecutions.

(Page 2)

THE REPORT WAS ADOPTED

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ELECTION OF THE TREASURER

The candidates for the position of Treasurer were Mr. Paul Lamek, Mr. Colin McKinnon, and Mr. Marc Somerville.

The Secretary indicated that those Benchers who had cast votes at the advanced poll on meeting day were not eligible to cast another vote until the second ballot. They were:

Messrs. Bragagnolo, Copeland, Hickey, Krishna, Lerner, O'Brien, D. O'Connor, Ruby, Scace and Rock.

Mr. Allan Lawrence was appointed as scrutineer.

The results of the first ballot were:

Total number of votes cast 48.

Mr. Lamek - 18  
Mr. Somerville - 17  
Mr. McKinnon - 13

A second ballot was cast with Mr. McKinnon being dropped from the ballot.

The results of the second ballot were:

Total number of votes cast 48.

Mr. Lamek - 24  
Mr. Somerville - 24.

With a tie vote Convocation approved the casting of a third ballot.

The results of the third ballot were:

Total number of votes cast 47.

Mr. Lamek - 24  
Mr. Somerville - 23.

The Secretary announced that Mr. Lamek had been elected Treasurer for the coming year.

It was moved by Mr. Yachetti, seconded by Mr. Brennan that the ballots be destroyed.

Carried

Mr. Lamek then took the Chair as Treasurer and briefly addressed Convocation:

"I am clearly profoundly honoured and very grateful to Convocation for the confidence that you show in me. At the candidates forum I said that this was the highest honour the profession had to offer and that I would covet it and would cherish it, and I shall indeed cherish it and I shall cherish this moment.

I undertake to Convocation and to the profession that I will do everything in my power to satisfy the demands of this office and to justify the confidence that you have been kind enough to repose in me.

25th June, 1993

I would like to say thank you on my own behalf and on behalf of Convocation and indeed on behalf of the profession to Allan Rock, who unhappily is not here. His dedication to this Society has been obvious in this place for many years, but never more so than during the last year, because he brought to this office his immense enthusiasm and energy and grace. His is an exceedingly tough act to follow and I can only say that I will do my best.

I know we would all want to wish him well in the new arena that he has chosen, regardless of our own individual political stripes, and that we congratulate Canada that people of Allan Rock's quality and character and calibre are prepared to make the sacrifices that are obviously involved in the decision to offer themselves in the public service.

I do particularly want to thank Marc Somerville and Colin McKinnon. I count myself extraordinarily fortunate to have prevailed against two such contenders. I am grateful to them that this whole election, and it was extended and prolonged, contained no rancor or anger or pettiness. Everything was conducted so far as I am aware, on the highest plane and I'm very grateful for that.

I said before there was much to be done in the coming year. I meant that and I continue to mean it. It's essential we get the committees and chairs in place as quickly as possible so that the Committees may continue their on-going work and may plan their priorities over the course of the summer.

With respect to committees, may I say only this, that my preference would be to retain in office certainly those chairs of committees who have held chairs for only one year. It seems to me very desirable, unless a chair wishes to be relieved or to move, to allow a chair of a committee more than one year to develop his ideas or her ideas in the direction that that committee should take, and I propose to be in touch with each benchner over the course of the next few days to discuss matters of committee assignments and chairs and so on.

Let's switch back from the large term future program to today's very full agenda, the short term. My thanks again before we continue with the debate. I will do everything that I can not to fail you during my term in this high office and my thanks to you."

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AGENDA: CATEGORY 5 - ITEMS TO BE SPOKEN TO

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of June 10, 1993)

Mr. Goudge spoke to Item A.-A.1 re: Proposed Professional Conduct Rule on Discrimination and Item C.-C.1 re: Minority Students Seeking Articles.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 10th of June 1993, the following persons being present: Stephen Goudge (Chair), Denise Bellamy, Shirley O'Connor, Nora Richardson, David Scott, April Burey, Andrew Ranachan, Adella Rodriguez, Joanne St.Lewis, Donald Crosbie, Mimi Hart and Alexis Singer.

A.  
POLICY

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A.1 Proposed Professional Conduct Rule on Non-Discrimination

A.1.1 In November 1992, the Treasurer invited the Equity Committee, as a matter of urgency, to prepare a detailed statement for the profession, bringing to life the existing rule on non-discrimination and making clear the Law Society's expectations of our members as a matter of professional conduct. The Treasurer expressed particular concern about discrimination by lawyers against those seeking articling positions or professional employment. The Equity Committee has since that time worked hard at this task, with the able assistance of staff and outside consultants.

A.1.2 Attached is a draft of a new Professional Conduct Rule 28 elaborating on the non-discrimination provisions of the rules that are now set out in Commentary 5 to Rule 13 as follows:

*Non-Discrimination*

5. The lawyer shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, religion, creed, sex, sexual orientation, age, marital status, family status, or handicap in the employment of other lawyers or articulated students, or in dealings with other members of the profession or any other persons.

A.1.3 The Committee believes that the explanations of the court and tribunal interpretations of the non-discrimination provisions of the Human Rights Code (H.R.C.) that are contained in the draft Rule will draw to the attention of many members, for the first time, the extent of their potential liability under the H.R.C. Before proceeding further with the draft rule the Committee considers it important to circulate it to the members for their information and comment.

A.1.4 The Committee requests the approval of Convocation to circulate the attached draft of a new Professional Conduct Rule 28 on non-discrimination to the members for their information and comment.

B.  
ADMINISTRATION

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No items.

C.  
INFORMATION

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C.1 Minority Students Seeking Articles

C.1.1 In January, 1993, the Society's Placement Office was aware of 135 students without an articling position for the 1993-1994 articling year (13.5% of the incoming Phase One class). It was estimated that 18.5% or 25 of these students were equity candidates.

C.1.2 In April, 1993, the Placement Office, with the assistance of the Law Deans, conducted a survey of third year law graduates to obtain specific information about the unplaced students. At that time, 85 students reported being without articles (6.8% of the incoming class of Phase One). Students were not asked to self-identify on this questionnaire due to concerns expressed by the law schools.

C.1.3 During Phase One of the Bar Admission Course, the Placement Office conducts a further survey of students to obtain updated information on the numbers who remain unplaced. As of June 10, 1993, 26 of the 420 students enrolled in the first session of Phase One have reported that they continue to seek articles. This represents 6.1% of the May class. 10 of the 26 students who reported that they continue to seek articles (38%) are equity candidates. (9 - are visible minorities; 1 is disabled; none are aboriginal).

C.1.4 The Placement Office has only preliminary information about the students in the second session of Phase One (which started on Monday, June 7th). Of the 16 students who have advised that they continue to seek articles, 8 (50%) identified themselves as equity candidates (7 are visible minorities; none are disabled; 1 is aboriginal).

C.1.5 In view of this information, it was agreed that the committee should take immediate action to assist the equity students rather than wait for the September figures.

C.2 Proposal for a Study of an Alternative Education Program for Foreign-Trained Lawyers

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C.2.1 The committee is working on a proposal to be made to the Ontario government for a study to determine what alternative educational programs for foreign-trained lawyers might be put in place. In preparing this material, one of the issues that arose was the extent to which the alternative educational programs would be made available to foreign-trained lawyers. The initial intent was to create such programs for visible minorities in order to meet the goal of the Equity Committee set out in the report of the special committee which was to increase the representation of visible minorities and aboriginals and persons with disabilities in the

25th June, 1993

legal profession. The initiatives of the Ontario government in respect of access to trades and professions indicate that they take a much broader approach to the question and wish to set up programs to facilitate the entry into trades and professions of foreign-trained persons from all countries and ethnic backgrounds. A great many of the foreign-trained lawyers seeking accreditation in Ontario come from Canada and are persons who have obtained a law degree in England, Wales or the United States. A concern was expressed about the desirability and the capability of the Law Society facilitating the entry of non-minority foreign-trained lawyers into the legal profession.

C.2.2 The Chair will consult with certain members of the committee over the summer in an effort to determine whether appropriate limitations can properly be applied to persons seeking to take advantage of the alternative educational program being planned.

C.3 Application of Inderpaul Singh Chandoke

C.3.1 Mr. Inderpaul Singh Chandoke is a Justice of the Peace in Ontario who was seeking to be qualified as a lawyer. He has not completed the requirements of the Joint Committee on Accreditation but has argued that his experience as a Justice of the Peace in Ontario coupled with his foreign law degree provided him with at least equal training and experience in Ontario as that obtained by law professors who are enabled by the Rules to be called to the bar after two years in a law school in Ontario. He asked that the Equity Committee support an amendment to the Rules that would enable him to be called to the Ontario bar without having to comply with the Joint Committee on Accreditation requirements.

C.3.2 The committee was unable to deal with the merits of this request because of a lack of time and the Chair, therefore, has put the matter over to the September 9, 1993 meeting of the committee.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June 1993

"S. Goudge"  
Chair

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

A-Item A.1.2 - Draft of a new Professional Conduct Rule 28, Commentary 5 re:  
Non-Discrimination. (Pages 1 - 7)

Item A.-A.1.

It was moved by Susan Elliott, seconded by Fran Kiteley that recognizing Draft Rule 28 is for circulation and comment only that it be amended by re-inserting an additional paragraph (h) under Commentary 8 as set out in the Report of Women in the Legal Profession as follows:

"requiring billable hours that necessitate a long work week, thereby effectively excluding those who have child-care responsibilities and adversely impacting such persons on the basis of family status or sex.

It was moved by Casey Hill that Ms. Elliott's motion be further amended by including the "words "or workload expectations" after the words "requiring billable hours".

This amendment was accepted by the mover and seconder.

A further amendment to the main motion was suggested by Mr. Cass that the word "thereby" be deleted and replaced with the word "which". Ms. Elliott accepted this amendment.

The Equity Report was stood down.

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Convocation took a brief recess at 10:30 a.m. and resumed at 10:45 a.m.

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CALL TO THE BAR

The candidates listed in the Admissions Committee Reports were called to the Bar by the Treasurer and then taken by Mr. Brennan before Mr. Justice Gerald Day to sign the Rolls and take the necessary oaths.

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|---------------------------|--|
| Debra Lynne Sattler       | 30th Bar Admission Course                          |
| Frank Catalano            | 34th Bar Admission Course                          |
| Chee Yen Suzane Chan      | 34th Bar Admission Course                          |
| James Bertram Davidson    | 34th Bar Admission Course                          |
| Keith Louis Gordon        | 34th Bar Admission Course                          |
| Maureen Patricia Hartney  | 34th Bar Admission Course                          |
| Rosemin Keshvani          | 34th Bar Admission Course                          |
| Alan Douglas Kurtz        | 34th Bar Admission Course                          |
| Catherine Mary Poyen      | 34th Bar Admission Course                          |
| Stewart Robert Shackleton | 34th Bar Admission Course                          |
| Peter van Overbeek        | 34th Bar Admission Course                          |
| Xiangmin Xu               | 34th Bar Admission Course                          |
| Ronald Shacter            | Special, Transfer, Quebec                          |
| Theresa Siok              | Special, Transfer, Quebec                          |
| Diane Florence Labelle    | Professor, Faculty of Law,<br>University of Ottawa |

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ITEMS TO BE SPOKEN TO - CONTINUED

INSURANCE COMMITTEE

Mr. Campbell spoke to Item 3 re: Consultant's Report and Item 1 of the in camera Report re: American Home Assurance Company.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

25th June, 1993

Your Committee met on Thursday, the 10th of June, 1993 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Hickey, Feinstein, Wardlaw, Cass, and Ms. Elliott.

Also in attendance were Messrs. Whitman and O'Toole.

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ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director reported that the net cost of new claims reported during the first five months of 1993 is \$13,556,946 compared to \$14,894,104 for the same period in 1992. Though the incidence of newly reported claims is higher for the first five months of 1993, the trend towards a decrease in the overall cost of new claims continues.

The Director also reported that \$1,529,133 in individual members' deductibles was recovered during the first five months of 1993 compared to \$646,625 for the same period in 1992. See Appendix "A".

2. DIRECTOR'S BUDGET RECONCILIATION REPORT

The Director's budget reconciliation report is attached as Appendix "B".

3. CONSULTANT'S REPORT

Pursuant to the Committee's recommendation, adopted by Convocation in March, Mr. W.C. Moore of McNeary Insurance Consulting Services Inc. was retained with respect to several matters currently being reviewed by your Committee. Copies of the report are being directed to Committee members preparatory to a special Committee meeting in August to consider Mr. Moore's comments in detail including his view that the Mandatory Program would be well served by moving the administrative component of the Professional Liability Insurance operations into LPIC. This suggestion together with other items in the Consultant's Report will be reviewed by the Committee with the objective to report to Convocation in the fall.

4. E&O CLAIM FILE AUDIT

The existing E&O Department claim file audit program consists of regular in-house file audits by Senior E&O Department staff in addition to periodic external audits involving the Program's reinsurers, Law Society auditors and independent audit consultants. Pursuant to your Committee's agreement to proceed with scheduling a claim file audit by an independent audit consultant, the Director has initiated steps to identify the most suitable individual to conduct the audit.

25th June, 1993

5. SEARCH COMMITTEE

Lin Whitman will be retiring from his position as Director of Insurance at the end of 1993. Your Committee recommends creating a Subcommittee consisting of Messrs. Campbell, Howie, Feinstein, Crosbie and Whitman to search for a new Director of Insurance.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"C. Campbell"  
Chair

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED  
"IN CAMERA"

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LEGISLATION AND RULES COMMITTEE

Meeting of June 10th, 1993

Mr. Cullity spoke to Item A.-A.1. re: Proposed Amendment of the Law Society Act re: eligibility to be Treasurer.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th day of June, 1993, at 10:30 a.m., the following members being present: M. Cullity (Chair), R. Cass, the Hon. A. Lawrence, S. Thom.

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

A.  
POLICY

- A.1. PROPOSED AMENDMENT OF THE LAW SOCIETY ACT TO PROVIDE THAT NO PERSON BE ELIGIBLE TO BE TREASURER WHO HAS NOT BEEN ELECTED AS A BENCHER IN THE MOST RECENT ELECTION
- A.1.1. Recommendation
- A.1.1.1. That Convocation request the Attorney General to place before the Legislative Assembly, for enactment, the following amendments to the English text of the *Law Society Act*, together with equivalent amendments to the French text of the act:
- A.1.1.1.1. Subsection 23 (1) to be amended by adding, after the final word "bencher" in the last line: "other than the right to be elected as Treasurer".

This amendment will disqualify appointed ("lay") benchers from being elected as Treasurer.

A.1.1.1.2. Subsection 25 (1) to be amended by striking out the words "one of their number" and substituting: "an eligible bencher to be".

This amendment will limit the categories of bencher who may be elected Treasurer to those benchers who are "eligible".

A.1.1.1.3. Subsection 25 (2) to be repealed and the following substituted therefor:

(2) The benchers who are eligible for election as Treasurer are those who hold office pursuant to section 20 or section 21 or who, but for section 14, would so hold office.

This amendment will define the benchers "eligible" for election as Treasurer. Only those who were elected bencher in the most recent bencher election, or those who have, since that election, been "elected in Convocation" to fill a vacancy, will be eligible. The reference to s. 14 is necessary because, when a bencher becomes Treasurer, he or she thereafter holds office as a bencher pursuant to that section and not by reason of being elected as a bencher.

A.1.2. Explanation

A.1.2.1. On February 26, 1993, Convocation adopted the following resolution:

That no person be eligible to be Treasurer who has not been elected as a bencher in the most recent election.

A.1.2.2. At present, the only requirement specified in the *Law Society Act* for the office of Treasurer is that the person be a bencher. Section 25 of the act reads:

25. - (1) The benchers shall annually at the regular Convocation in the month of May, or at such other time as the benchers may fix, elect one of their number as Treasurer.

(2) The Treasurer is eligible for re-election.

A.1.2.3. On April 23, Convocation approved of the Committee's proceeding on the following assumptions:

A.1.2.3.1. - that one of the necessary consequences of the resolution adopted by Convocation on February 26, 1993, would be to disqualify appointed (i.e. "lay") benchers from being Treasurer;

A.1.2.3.2. - that the resolution of February 26, 1993, was not intended to disqualify benchers who hold office by virtue of having been elected in Convocation to fill a vacancy.

A.1.2.4. Any wording which is to accomplish Convocation's objective must take into account the fact that subsection 23 (1) of the act gives to each appointed ("lay") bencher "all the rights and privileges of an elected bencher" (including, presumably, the right to be elected Treasurer).

A.1.2.5. Similarly, section 14 gives "all the rights and privileges of an elected bencher" to every member "who has been or is elected to the office of Treasurer" and it provides that such a person is a bencher by virtue of his or her office. The amendments restrict the right of re-election to those Treasurers and former Treasurers who were elected benchers in the most recent bencher election pursuant to section 20 or who were subsequently elected by Convocation to fill a vacancy pursuant to section 21.

- A.1.2.6. Attachment B is a reprint of the relevant sections of the *Law Society Act*, showing the proposed amendments.

B.  
ADMINISTRATION

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- B.1. DISCIPLINE MANAGEMENT PROCEDURES: WHETHER THEY SHOULD BE PRESCRIBED IN THE REGULATIONS: DIRECTIONS SOUGHT
- B.1.1. In October 1992, on the recommendation of the Policy Section of the Discipline Committee, Convocation adopted in principle a set of "Discipline Management Procedures". The procedures were finally approved by Convocation on January 29, 1993.
- B.1.2. Much of the language in the procedures is of a mandatory nature. Although the practice may be to implement them as guidelines, the procedures convey the impression that they have mandatory effect on all persons subject to them, particularly members who are subject to discipline proceedings.
- B.1.3. In the Legislation and Rules Committee a question was raised as to whether the procedures ought to be prescribed in subordinate legislation (the regulations or rules made under the *Law Society Act*). The staff were asked to look into the matter.
- B.1.4. Your Committee received and considered a memorandum of law prepared by Simon Hodgett (Staff Lawyer - Research). The memorandum sets out the following conclusions:
- B.1.4.1. Neither the *Law Society Act* nor the common law provides clear authority to make subordinate legislation of general application other than by way of rules or regulations. The Procedures as they currently exist are likely not binding.
- B.1.4.2. The language and form of the Procedures indicates that Convocation intended them to be binding. There is the possibility that members, the public and staff will be misled.
- B.1.4.3. The Procedures should be promulgated by regulation. An interpretation of the *Law Society Act*, and the reports of the McRuer Commission and the Professional Organizations Committee make this the most reasonable conclusion.
- B.1.5. Mr. Hodgett's memorandum also points out that s. 28 of the *Statutory Powers Procedure Act* appears to require that the Statutory Powers Procedure Rules Committee be consulted concerning the Discipline Management Procedures.
- B.1.6. Your Committee is satisfied that, although some parts of the Discipline Management Procedures are statements of policy or guidelines, other parts are intended to be mandatory and ought to be prescribed by regulation.
- B.1.7. Your Committee suggests that amendment of Regulation 708 will be necessary if the Discipline Management Procedures are to have their intended effect.

- B.1.8. On the assumption that the major amendments to the *Law Society Act* and the regulations required to implement the discipline reform measures agreed by Convocation in 1990-1992 will not be forthcoming in the immediate future, your Committee seeks directions from Convocation as to whether it should proceed, in consultation with the Discipline Committee, to draft the necessary amendments to Regulation 708.

Note: Motion, see page 165

B.2. BENCHER ELECTIONS: IMPLEMENTATION OF REGIONAL SCHEME ADOPTED BY CONVOCATION ON MARCH 26, 1993: DIRECTIONS SOUGHT

- B.2.1. On March 26, 1993, Convocation adopted the report of the Special Committee on Bencher Elections and thereby approved a scheme of regional election of benchers.
- B.2.2. It has been the position of Convocation that amendment of the *Law Society Act* will be necessary if the scheme of regional election is to be implemented.
- B.2.3. At its meeting on April 23, 1993, Convocation approved a suggestion that responsibility for drafting the required amendments be given to the Special Committee which would also be considering other amendments to the *Law Society Act*. Your Committee understands that the Special Committee is not proceeding at present.
- B.2.4. Your Committee seeks directions from Convocation as to whether it wishes the Legislation and Rules Committee to assume responsibility for drafting the amendments necessary to implement the scheme of regional election.

Note: Motion, see page 165

B.3. REGULATION 708: PROPOSED AMENDMENT OF SUBSECTION 18 (1) TO INCLUDE SPECIFIC REFERENCE TO SECTIONS 15.1 AND 15.2

B.3.1. Recommendations

- B.3.1.1. That Convocation make a regulation to amend subsection 18 (1) of Regulation 708 of the Revised Regulations of Ontario, 1990, by adding the section numbers "15.1, 15.2" after section number "15" so that subsection 18 (1) will read:

18. - (1) The chair or a vice-chair of the Discipline Committee may at any time require an investigation to be made by a person designated by him or her of the books and accounts of any member for the purpose of ascertaining and reporting whether sections 14, 15, 15.1, 15.2 and 16 have been and are being complied with by such member who shall produce forthwith to such person all evidence, vouchers, records, books, papers and shall furnish such explanations as such person may require for the purpose of his or her investigation. (Underlining added.)

- B.3.1.2. That Convocation request the Attorney General to arrange for a similar amendment to be made to the French text of Regulation 708.

B.3.2. Explanation

- B.3.2.1. In September 1992, sections 15.1 and 15.2 of Regulation 708 came into force. These sections require the keeping of certain books, records and accounts in respect of mortgages held in trust and client funds which are invested and secured by a mortgage.
- B.3.2.2. Subsection 18 (1) has been part of the regulation for many years. It gives specific power to the Chair or a Vice-Chair of the Discipline Committee to require an investigation to be made of a member's books and accounts for the purpose of ascertaining and reporting "whether sections 14, 15 and 16 have been and are being complied with by such member...." No reference to sections 15.1 or 15.2 is included in Subsection 18 (1).
- B.3.2.3. On May 28, 1993, Convocation adopted a recommendation from the Discipline Policy Committee that the Legislation and Rules Committee be asked to draft an amendment to the regulation to correct this anomaly.
- B.3.2.4. The amendments to the English and French texts of the regulation will not come into force until approved by the Lieutenant Governor in Council, as provided by s. 63 of the *Law Society Act*.

B.4. RULES MADE UNDER SECTION 62 (1) OF THE LAW SOCIETY ACT: AMENDMENT OF PART OF RULE 50: TRANSFER MEMBERS: APPLICATION FEE

B.4.1. Recommendations

- B.4.1.1. That in the part of Rule 50 entitled "TRANSFER MEMBERS" the words "Upon becoming a member of the Society under the Transfer Regulations, payable upon filing application", be revoked and replaced by the words "Upon filing an application for admission under section 4 of Regulation 708 of the Revised Regulations of Ontario, 1990 -- Non-refundable Application Fee" so that the part of the rule in question will read:

TRANSFER MEMBERS

<u>Upon filing an application for admission under section 4 of Regulation 708 of the Revised Regulations of Ontario, 1990 -- Non-refundable Application Fee</u> .....	\$ 101
Upon sitting the Common Law examination .....	\$ 500
Upon sitting the Common Law examination a second or subsequent time .....	\$500
Upon sitting the Transfer examinations .....	\$ 600
(Amended text underlined.)	

- B.4.1.2. That the French Language Services Committee be asked to arrange for a French translation of the amended rule.
- B.4.2. Explanation
- B.4.2.1. The sentence from Rule 50 which is underlined in B.4.1.1 above currently reads:

Upon becoming a member of the Society under the Transfer Regulations, payable upon filing application 101

- B.4.2.2. It has been pointed out by the staff that the first sentence is inaccurate. The application fee is payable not upon becoming a member but upon filing the application to become a member.
- B.4.2.3. It has also been suggested that the rule should make clear that the application fee is non-refundable. The wording proposed for this purpose is consistent with wording used elsewhere in Rule 50.
- B.4.2.4. The words "the Transfer Regulations" are not precise. The proposed amendment specifies the regulation and the section.

B.5. RULES MADE UNDER SECTION 62 (1) OF THE LAW SOCIETY ACT:  
CONSEQUENTIAL AMENDMENT OF PART OF RULE 50: CALL AND ADMISSION: FEE

B.5.1. Recommendations

- B.5.1.1. That in the part of Rule 50 entitled "CALL AND ADMISSION", in the paragraph headed "General", the words "under the Transfer Regulations", be revoked and replaced by the words "transfer applicants under section 4 of Regulation 708 of the Revised Regulations of Ontario, 1990" so that the paragraph will read:

CALL AND ADMISSION

General

For call to the bar and admission as a solicitor of candidates from the Bar Admission Course or transfer applicants under section 4 of Regulation 708 of the Revised Regulations of Ontario, 1990, payable on or before the first day of the month in which the candidate intends to be called and admitted . . . . . \$ 210  
(Amended text underlined.)

- B.5.1.2. That the French Language Services Committee be asked to arrange for a French translation of the amended rule.

B.5.2. Explanation

- B.5.2.1. The paragraph currently reads

CALL AND ADMISSION

General

For call to the bar and admission as a solicitor of candidates from the Bar Admission Course or under the Transfer Regulations, payable on or before the first day of the month in which the candidate intends to be called and admitted . . . . . \$ 210

- B.5.2.2. The amendment recommended in B.4.1.1 of this report replaces the general words "the Transfer Regulations" (in the preceding part of Rule 50) with a more precise reference to a specific section of a specific regulation. If that amendment is adopted by Convocation, the other reference in Rule 50 to "the Transfer Regulations" ought to be similarly amended in the interests of consistency.

B.6. RULES MADE UNDER SECTION 62 (1) OF THE LAW SOCIETY ACT: FRENCH TRANSLATIONS OF AMENDMENTS MADE JANUARY 1, 1992 TO APRIL 30, 1993: FORMS: OTHER MINOR REVISIONS

- B.6.1. Since January 1991 there has existed a French version of the Rules made under s. 62 (1) of the *Law Society Act*. The most recent version, approved by Convocation on September 24, 1992, incorporated all amendments to the English version made prior to January 1, 1992.
- B.6.2. The staff of the French Language Services Department have prepared a French translation of all amendments to the Rules made between January 1, 1992 and April 30, 1993. The staff have also completed the translation of the forms prescribed under the Rules (except for those applicable to law corporations) and have prepared a set of minor revisions to the previously approved French text of the Rules to make the translation more accurate.
- B.6.3. The French translations (together with the relevant English text) will be found at Attachment A.
- B.6.4. Your Committee understands that, at its meeting on June 10, 1993, the French Language Services Committee approved these translations as accurate.
- B.6.5. The French Language Services Committee having approved the translations of
- (i) the amendments to the English text of the Rules made between January 1, 1992 and April 30, 1993,
  - (ii) Forms 2, 3 (including schedule A), 4 and 5, and
  - (iii) the minor revisions to the text of the Rules as approved by Convocation on September 24, 1992,
- your Committee places the translations before Convocation for its approval.

C.  
INFORMATION

- C.1. FRENCH VERSIONS OF REGULATIONS 708 AND 709: APPROVED AND FILED
- C.1.1. The French versions of Regulations 708 and 709, which were approved by Convocation on March 26, 1993, were approved by the Lieutenant Governor in Council on May 5, 1993 and filed on May 6, 1993.
- C.1.2. The French versions appeared as O.Reg 288/93 and O.Reg. 289/93 and were published in issue number 21 of Volume 126 of *The Ontario Gazette* (May 22, 1993).

25th June, 1993

C.1.3. Since the French versions have force and effect equal to the English versions, they will be filed in the Legislation and Rules binders in Convocation Room.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"M. Cullity"  
Chair

Ms. Graham wished it be noted that had she been present when the debate on whether lay Benchers could be eligible for election of Treasurer, she would have voted in favour of lay Benchers being eligible for election to the office of Treasurer.

LIBRARIES AND REPORTING COMMITTEE

Meeting of June 10, 1993

Mr. Murphy spoke to Item B.-1 re: Ontario Reports - Cover Page (top half)  
- Translation and Item B.-6 re: Ontario Reports - Practice Directions.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of June, 1993, at 9:00 a.m., the following members being present:

D. Murphy, (Chair), R. Bragagnolo, M. Cullity, G. Farquharson, A. Feinstein, M. Hennessy, M. Hickey, B. Pepper, P. Peters, and M. Weaver. G. Howell also attended.

A.  
POLICY

No items

B.  
ADMINISTRATION

1. Ontario Reports - Cover Page (top half) - Translation

A draft of a bilingual version of the top half of the cover page of the Ontario Reports was considered at the meeting. The Committee recommends that the final bilingual version of the OR cover page be adopted. A copy of the final bilingual version is attached.

2. Ontario Reports - Judges' Listing - Masters

The Committee recalled that Convocation recently approved the adding of the names of eight (8) Small Claims Court judges to the list appearing in Part 10 and the bound volumes of the Ontario Reports. Subsequently, the Law Society received a letter from B.T. Clark, Q.C., Managing Master of the Ontario Court (General Division), asking that the names of the Senior Master and sixteen (16) Masters be added to the List. The Committee recommends that judges only be listed in the list of judges in the OR bound volumes, and that accordingly the request of Master Clark (on behalf of the Masters of the Ontario Court [General Division]) be denied.

3. Ontario Reports - Selection of cases - Provincial Division judgments

The Chair (Mr. Murphy) had received expressions of concern over the recent reporting of two judgments from the Ontario Court (Provincial Division). One of the judgments had been delivered orally. The two judgments were:

Peterborough v. Lockyer 12 OR (3d) 214 [Part 3, May 7th]

R. v. Richard 12 OR (3d) 260 [Part 4, May 14th]

Paul Perell, "lead editor" for the OR Editorial Board, had discussed the rationale for the reporting of these decisions with the Chair of the Committee. After discussion, the Committee was satisfied with the rationale provided by the OR Editorial Board, and decided that no further action was required.

4. Ontario Courthouse Librarians' Association (OCLA) - advertisements in Ontario Reports

The Committee considered a letter from Wendy Hearder-Moan, the Hamilton Law Association librarian and chair of OCLA, along with draft versions of advertisements to appear in the Ontario Reports. The Committee decided that the placing of advertisements by the librarians' association was for the association to consider, not the Law Society. The Chief Librarian was instructed to liaise with the association on this matter.

5. Non-Bencher Members on Committee

Pursuant to the Secretary's June 8th Memorandum, it was confirmed that the Libraries & Reporting Committee did not need to have a non-Bencher member appointed to the Committee from the profession at large, because there is already a non-bencher member on the Committee from the County and District Law Presidents' Association (CDLPA). The Chair expressed appreciation to Ken Golish from Windsor, Ontario for his service as non-Bencher member on the Committee over the past year.

The Committee pointed to an oversight on the bottom of page two of the Memorandum and recommends that the Chair of CDLPA's Library Committee be added to the list of "special" non-bencher members appointed outside the terms of the new policy of non-bencher members from the profession at large. This oversight was brought to the attention of the Secretary of the Research & Planning Committee and will lead to a revision of the list.

25th June, 1993

6. Ontario Reports - Practice Directions

The Committee considered a June 3rd memo from Butterworths, enclosing a May 21st memo to Butterworths from Boris Krivy (an official with the Ontario Court of Appeal) and a draft set of Practice Directions from the Court of Appeal to be published in the case law section of the Ontario Reports. Because the Law Society had not been consulted on the general policy of including all practice directions in the Ontario Reports, the matter was deferred to the next meeting of the Committee in order to consider such implications as cost, case law selection, etc.

ALL OF WHICH is respectfully submitted

Dated this 25th day of June, 1993

"D. Murphy"  
Chair

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

B-Item 1 - Copy of the final bilingual version of the cover page of the Ontario Reports.

Item B.-6

It was moved by Fran Kiteley, seconded by Philip Epstein that as an interim measure the Law Society make a general mailing to Law Society members enclosing practice directions.

Carried

THE REPORT AS AMENDED WAS ADOPTED

PROFESSIONAL CONDUCT COMMITTEE

Meeting of June 10, 1993

Mr. Campbell spoke to Item A.-3 re: Martin v. Gray.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of June, 1993 at three o'clock in the afternoon, the following members being present: Campbell (in the Chair), Cullity (Vice-Chair), Elliott, Finkelstein, Goudge, Hickey, McKinnon, Rowe (non-bencher) and Scott.

A.  
POLICY

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1. The following item appeared on the January 1993 agenda:

LAWYER TO SET UP A CONSULTING COMPANY SEPARATE  
FROM HIS LAW FIRM - CONSULTING COMPANY TO GIVE  
BUSINESS ADVICE TO CLIENTS OF A FOREIGN LEGAL  
CONSULTANT - REQUEST FOR ADVICE

The Committee made the following report to Convocation in November 1992. Convocation has returned the matter to the Committee so that one of the Committee members could have written input.

The Committee discussed the proposal from a lawyer who wishes to set up a consulting firm in addition to his law practice. He will have an association with an American law firm which has a Toronto branch office that is licensed as a foreign legal consultant.

Set out below are the details of how he proposes to operate.

1. ABC, a member of The Law Society of Upper Canada, currently carries on, or may establish, a sole proprietorship for the practice of law in Ontario. Additional lawyers qualified to practise in Ontario may become partners, associates or employees of ABC in the future. "ABC" refers to ABC or the ABC firm, as the case may be.
2. ABC will practise law in Ontario in accordance with the rules and subject to the jurisdiction of The Law Society of Upper Canada. ABC's books and accounts pertaining to his or her practice in Ontario will be available in Ontario to The Law Society's auditors or agents.
3. ABC may enter into an agreement with XYZ, a foreign legal consultant firm registered or to be registered in Ontario, whereby ABC would use the Toronto office premises of XYZ. ABC would use the office space, furnishings, secretarial and paralegal assistance of XYZ, as well as record keeping, accounting, billing, library and research and other office management services and facilities of XYZ.  
  
ABC would be publicly listed separately as an occupant of the building in which the offices of XYZ would be located. ABC would have a separate phone listing and telephone number which would be answered so as to identify the practice of ABC.
4. ABC, or ABC Limited, an Ontario corporation to be owned by ABC or members of his or her family, may have an agreement with XYZ whereby the services of ABC would be available to provide consulting and advisory services to XYZ with respect to its international law practice. In providing such services, ABC may be identified as consultant to XYZ.
5. In providing consulting and advisory services to XYZ's clients on matters not involving the rendering of advice on Ontario law, ABC may use XYZ's letterhead and be identified as consultant to XYZ.

6. To the extent that clients of XYZ require advice on Ontario law, such advice would be provided to the client directly by ABC as part of ABC's law practice.
7. The letterhead of ABC may identify ABC as associated with XYZ. The letterhead of XYZ may identify XYZ as associated with ABC.

The following points were identified as needing possible clarification.

Points 1 and 2

Do not present a problem.

Point 3 - sharing office space with a foreign legal consultant

ABC (the law firm) proposes sharing office with a registered foreign legal consultant.

Should foreign legal consultants be permitted to share office space with Ontario lawyers? What is the harm in their sharing office space?

The Committee concluded that there would be no harm with an office sharing arrangement.

Point 4 - the consulting company

ABC (the law firm) is going to set up a consulting firm, ABC Ltd., which will provide "consulting and advisory services to XYZ with respect to its international law practice".

Should the name of the consulting company operate under a name that is different from that of the ABC law firm to avoid confusion?

In providing consulting services to the international law practice of XYZ, can the consulting company of ABC be identified "as consultant to XYZ"?

The Committee was of the opinion that it would be prudent for the consulting company to operate under a name that was different from that of the law firm as it would clarify the respective roles the lawyer was playing and would avoid any confusion.

Point 5 - billing of XYZ's clients by ABC's consulting firm

- (a) Should the ABC consulting firm bill XYZ's clients on the letterhead of XYZ as is proposed?
- (b) Or, would it be preferable to have the ABC consulting firm bill the clients of XYZ directly?
- (c) An alternative to the above would be for the ABC consulting firm to bill the XYZ firm for its services. XYZ in turn would show the consulting fees as a disbursement on its account to their clients.

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Options (b) and (c) would serve to clarify the role of the consulting company.

The Committee did not have any concerns with the billing proposals.

Point 6

The clients of XYZ can go to the ABC law firm for advice on the laws of Ontario. No problem here.

Point 7 - indication of an association between the ABC law firm and the foreign legal consultant XYZ

There are really two points to this point.

- (1) The Professional Conduct Committee in the past has taken the position that a law firm can refer to its affiliation with another law firm whether that law firm is in Ontario or not so long as there is an affiliation or an association. Hence the ABC law firm can show its association with the XYZ law firm in the U.S.
- (2) The lawyer here would like to show on its letterhead that it is associated with the foreign legal consultant XYZ in Toronto. He would also like to have the XYZ foreign legal consultant show its association with the ABC law firm.

Is there any harm in permitting this association to be shown on either letterhead?

The Committee concluded that there was no harm.

The Committee asks Convocation to adopt its assessment.

David Scott has sent the following letter in which he indicates what his concerns are.

Firstly, subject to one caveat, I think it really is only paragraph "Point 7" on page 5 of the Report that troubles me. Having said that, I am concerned about the "thin edge of the wedge" effect in these kinds of arrangements. Under s.50 of the Law Society Act, it is an offence for a non-member to

"hold himself out as or represent himself to be a barrister or solicitor or practice as a barrister or solicitor."

The language is vague but, I believe, the sensitivity escalates when the institution in question is a lawyer or group of lawyers entitled in their own right to practice law elsewhere but not in this Province. The public, even the semi-sophisticated public, cannot be expected to make the fine distinctions that might be required in order to unravel the real meaning of the relationships of the type envisaged in this inquiry.

As I understand it, what is contemplated here is that a lawyer (in due time developing into a law firm) would carry on his or her professional practice in concert with and out of the same facilities as a foreign legal consultant using common facilities, accounting, etc. and each would show the other on their respective letterheads in some associated capacity. It seems to me that the risk of

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holding out here is obvious. In the circumstances, I think the Law Society should adopt a fairly tough stance.

In the first place, I am in complete agreement with the conclusion reached with respect to Item 3.4 dealing with the law firm and its related consulting firm utilizing the same name. To me this is more than a mere matter of clarity or confusion. It should be made clear that it would be prohibited to use the same name where, as here, it is intended, utilizing the same name, to offer the services of a barrister and solicitor in Ontario as well as undefined "consulting services" abroad, all under the umbrella of the letterhead of a foreign legal consultant. It seems to me that this raises the clear likelihood that members of the public would think that the foreign legal consultant consisted of people entitled to practice in Ontario and offering their services in Ontario, particularly where the billing would be under the name of the foreign legal consultant. Accordingly, while it may not be necessary, I would have made it quite clear that it was not just a matter of convenience; rather, offering consulting services in the manner contemplated, including the billing arrangement, would only be acceptable if it was done under an entirely different name from the name of the Ontario law firm.

If this were done, then the Ontario law firm would merely be sharing space with a foreign legal consultant and advertising its relationship with the foreign legal consultant on its letterhead. This could not be offensive, at least from the point of view of the protection of the public in the Province of Ontario. The question for the house is whether it is proper for the Ontario letterhead of the foreign legal consultant to identify an association with an Ontario law firm. I would take exception to this. It seems to me that this is a form of holding out by the foreign legal consultant of the availability of legal services through it in the Province of Ontario and is equivalent to the kind of holding out which is at the root of s.50. What does "associated with" mean to the public. The ordinary citizen might well regard this as meaning "part of." The fine distinctions would, in all probability, not be drawn.

Accordingly, it is my view that foreign legal consultants should not be permitted on their own letterhead to identify themselves with Ontario lawyers or law firms. The converse, Ontario law firms associating themselves with foreign law firms, is not offensive, at least from the point of view of the protection of the public of Ontario, which is what our concern should be.

I would therefore recommend that the language under Item 3.4 of the Report with respect to the consulting company should be beefed up to make it clear that it would be improper to utilize the same name. Further, the conclusion with respect to Point 7(2) of the Report that there was "no harm" in the foreign legal consultant showing its association with the ABC law firm on its letterhead ought to be amended to conclude that it would be inappropriate to do so.

#### Earlier Policy of the Committee

A few years ago the Committee told lawyers that they could indicate they had an association or affiliation with other lawyers or law firms in Ontario or in any other jurisdiction for that matter. No attempt was made to define or spell out what constituted either an "association" or "affiliation".

25th June, 1993

It would seem illogical that a Toronto lawyer could indicate on letterhead that he or she had an affiliation with a lawyer or law firm in New York, say, but could not by the same token say that he or she had a connection with a New York law firm that also happened to have a member of that firm as a foreign legal consultant in Toronto duly licensed and regulated by the Law Society.

Conversely, it would also seem illogical that a New York law firm could presumably indicate on its New York letterhead the affiliation with a Toronto lawyer, which would be regulated by the applicable New York rules, but could not do so on its Toronto office letterhead if it happened to have a member of that firm as a foreign legal consultant in Toronto duly licensed and regulated by the Law Society.

It should be noted that the small number of foreign legal consultants approved by the Law Society specifically state on their letterhead and on any advertising, that they are not licensed to practice law in Ontario. (See the attached letterhead used by one such foreign legal consultant - numbered 1.)

The Committee has obviously to decide what harm, if any, could possibly result from a reference on a letterhead of either the Toronto law firm or that of the foreign legal consultant to an association between them.

The Committee in January decided that Mr. Spence, as he then was, should chair a sub-committee. Due to his appointment to the Bench and the press of other business the sub-committee never came into existence.

The Society's Secretary decided that an opinion should be obtained for the guidance of the Committee.

Keith Hamilton was asked to give an opinion. Attached is a copy of the letter of request (numbered 2 & 3) to Mr. Hamilton together with his response (numbered 4 - 7).

The Committee concluded that the lawyer could proceed with the arrangement with the foreign legal consultant (including showing on the letterhead of his law practice that he has an association with a foreign legal consultant). The Ontario lawyer and the foreign legal consultant should take care to make sure their respective roles are made clear to members of the public with whom they are dealing. For example, when ABC consulting firm bills a client of the foreign legal consultant XYZ, he should do so directly and not through XYZ because this would serve to distinguish his role from that of the foreign legal consultant.

The Committee asks Convocation to adopt this position.

2. REQUEST FOR ADVICE - PROTECTION OF A CLIENT'S ASSETS  
FROM POTENTIAL CREDITORS - CONSIDERATION BEING GIVEN  
TO MOVEMENT OF ASSETS OFF SHORE

A lawyer has sent the following letter to the Law Society:

We have a client who has recently been convicted of an offence contrary to the Criminal Code of Canada; is not presently in custody; and who is to be sentenced shortly.

25th June, 1993

It is expected that our client will be sentenced to a period of incarceration.

This client is a person of not inconsiderable financial substance and is concerned that a civil action arising out of the circumstances that led to conviction may be commenced. This concern has led, in turn, to the client seeking our advice as to how to best protect assets against execution if an action is brought and succeeds.

Please be advised that no part of this client's assets are comprised of the proceeds of crime.

As of the date of this letter, neither the client, or any member of our firm has any actual or constructive notice that an action of the type above-mentioned has been or will be commenced.

We are seeking your opinion as to whether it is contrary to any of the Rules of Professional Conduct to advise this client:

1. Concerning the existence of any off-shore jurisdiction(s) where assets can be relocated, where such jurisdiction(s) have no reciprocal judgment enforcement legislation; and
2. To settle assets on a trust, which names related persons as capital beneficiaries; and the situs of which is a jurisdiction with no reciprocal judgment enforcement legislation;

in each case, with a view to sheltering the assets from execution.

We are also seeking your opinion as to whether it is contrary to any of the Rules of Professional Conduct to give the advice above-mentioned if we have notice of either:

- (a) The existence of a civil action; or
- (b) A verbal or written intention to commence an action.

If you have any questions or require any further information, please do not hesitate to contact the writer.

A former Chair of the Committee, Mr. A. Burke Doran, Q.C., gave a paper entitled "Ethical Duties of the Lawyer Representing a Client who is on the verge of Insolvency or is Insolvent" at the March 1988 Special Lectures. A copy of this paper is attached (numbered 8 - 15).

The Committee concluded that in the circumstances of the case before it, the lawyer should refuse to act.

The Committee also concluded that the Special Committee on the Review of the Rules of Professional Conduct should be asked to look into this subject.

The Committee asks Convocation to adopt its position.

3. The following item appeared on the May 1993 Report to Convocation.

FEDERATION OF LAW SOCIETIES COMMITTEE  
ON THE MARTIN V. GRAY CASE (CONFLICTS  
CREATED BY THE MIGRATING LAWYER)

The Professional Conduct Committee had before it at its January meeting a copy of the draft rule designed to address the problems created by the migrating lawyer.

The Federation's Committee met again on April 26th in Montreal. Mr. Campbell and the Committee's Secretary were present at the meeting. The draft rule is now being revised to address some of the concerns that had been raised. The new rule will be shorter and simpler. It should be available for discussion at the Committee's June meeting.

The Federation's Committee is considering what future work it should undertake. The issue of spousal connection as a possible conflict has been addressed in a redraft of the rule. There was before the Committee the issue of acting against a former client and material on point from the English Law Society, the American Bar Association and the various law societies in Canada.

David Hashey, Q.C. of New Brunswick, who chairs the Federation's Committee, asked those attending the meeting on April 26th to determine if there would be support from their respective law firms for continuing the Committee's work on conflicts issues.

The Committee wishes the Federation's Committee to continue its work in the conflicts field. The Federation's work will be of assistance to the Special Committee that is undertaking a revision of the Rules of Professional Conduct.

The Committee asks Convocation to support the continued work of the Federation's Committee on the conflicts issue.

Convocation and the Professional Conduct Committee gave its blessing to the continued work of the Federation of Law Societies Committee that has been studying the conflicts problems created by *Martin v. Gray* and will be studying other related conflicts issues.

The Federation's Committee has revised its earlier draft rule to make it shorter and more succinct. This draft rule is to be considered at the August meeting of the Federation in Quebec City. Attached is a copy of this latest draft rule (numbered 16 - 23).

The Committee approved the rule in principle and asks Convocation to do likewise.

C.  
INFORMATION

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1. PROPOSED NEW RULE ON DISCRIMINATION (RULE 28) -  
RECOMMENDATION FROM THE EQUITY COMMITTEE

The Committee discussed a proposed new rule with the chair of the Equity Committee, Mr. Goudge, at its May and June meetings.

Mr. Goudge reported at the June meeting that a draft rule would be presented at the June Convocation with the recommendation that it be circulated to the members of the profession during the summer so that their views on the subject can be obtained.

The Professional Conduct Committee will be reporting further to Convocation in the Fall.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"M. Somerville"  
Chair

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

- A-Item 1 - Example of a letterhead of foreign legal consultant licensed in Ontario. (Page 1)
- A-Item 1 - Copy of a letter from Mr. Stephen E. Traviss, Senior Counsel Professional Conduct dated April 6, 1993 to Mr. Keith R. Hamilton of Vancouver, B.C. (Pages 2 - 3)
- A-Item 1 - Copy of response from Mr. Keith R. Hamilton to Mr. Stephen E. Traviss dated May 19, 1993. (Pages 4 - 7)
- A-Item 2 - Copy of a paper by Mr. A. Burke Doran, Q.C. entitled "Ethical Duties of the Lawyer Representing a Client who is on the verge of Insolvency or is Insolvent". (Pages 8 - 15)
- A-Item 3 - Copy of the latest draft rule re: Conflicts arising as a result of transfer between law firms. (Pages 16 - 23)

Mr. Campbell invited comments from the Bench over the course of the summer on the draft Rule which was approved in principle.

SPECIALIST CERTIFICATION BOARD

Meeting of June 10, 1993

Mr. Yachetti spoke to Item A.-A.1. re: Labour Law Specialty.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday, the 10th of June, 1993 at twelve o'clock noon, the following members being present: R.D. Yachetti (Chair), R.D. Manes (Vice-Chair), J. Callwood, E.J. Levy, D.W. Scott and G.P. Sadvari. S. Thomson, of the Law Society, was also present.

At twelve-thirty in the afternoon, the following members and guests of the Environmental Law Specialty Committee attended the meeting: R.A. Cotton (Chair), H. Poch (Vice-Chair), Prof. J.G.W. Manzig, L.C. McCaffrey and guests R.G. Patterson (Chair - Environmental Assessment Board - Ontario Ministry of the Environment), J.Z. Swaigen (Chair - Environmental Appeal Board - Ontario Ministry of the Environment), C. Spoel (Chair - C.B.A.O. Environmental Law Section), and J.M. Johnson (Director - Legal Services Branch - Ontario Ministry of the Environment).

At one o'clock in the afternoon, the following members and guest of the Labour Law Specialty Committee attended the meeting: R.C. Fillion (Chair), A.M. Minsky (Vice-Chair), C.G. Paliare and guest R.O. MacDowell (Alternate Chair - Labour Relations Board - Ontario Ministry of Labour).

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

The Bankruptcy and Insolvency Law Specialty Committee met on Thursday, the 27th of May, 1993 at five-thirty in the evening.

The Criminal Litigation Specialty Committee met (in person/conference call) on Friday, the 28th of May, 1993 at one o'clock in the afternoon.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 8th of June, 1993 at eight-thirty in the morning.

The Environmental Law Specialty Committee met on Thursday, the 10th of June, 1993 at eleven o'clock in the morning.

A.

POLICY

A.1. LABOUR LAW SPECIALTY

A.1.1. In June 1992 the Labour Law Specialty Committee submitted its Report to the Board, which included amended Standards for certification of Labour Law Specialists (dated May 1992) following consultation with the profession.

A.1.2. The Committee defined the Specialty as follows:

A.1.2.1. "The Specialty field of Labour Law is the practice of law dealing with all aspects of labour and employment relations (public and private sectors) including, but not limited to, certification proceedings, collective bargaining, collective agreement administration, labour arbitration, unfair labour practice complaints, strikes and picketing, the administration of employee benefit plans, workers' compensation, occupational

health and safety, employment standards, pay equity, rights of individual employees, rights of union members, employment discrimination; all matters arising under the Labour Relations Act, the Canada Labour Code, the Public Service Staff Relations Act, the Hospital Labour Disputes Arbitration Act, the Crown Employees Collective Bargaining Act, the Public Service Act, the School Boards and Teachers' Collective Negotiations Act, the Colleges Collective Bargaining Act, the Employment Standards Act, the Industrial Standards Act, the Workers' Compensation Act, the Occupational Health and Safety Act, the Federal and Ontario Pension Benefit Act, the Pay Equity Act, the Federal and Ontario Human Rights Code and other analogous employment or labour relations-related Federal and Ontario statutes; practice before the Ontario Labour Relations Board, the Canada Labour Relations Board, the Public Service Staff Relations Board, the Grievance Settlement Board, the Public Service Grievance Board, the Education Relations Commission, the Ontario Public Service Labour Relations Tribunal, the Pay Equity Hearings Tribunal, a Board of Inquiry appointed under the Ontario Human Rights Code or a Human Rights Tribunal Panel appointed under the Canadian Human Rights Act, Referees appointed under the Employment Standards Act, Ontario and Federal Courts in labour relations or employment law matters and before arbitrators or arbitration boards."

- A.1.3. Just prior to the 1992 summer recess, the Board was considering whether the public would be better assisted by including the Labour Law, Workers' Compensation Law, and Wrongful Dismissal Law Specialties under an umbrella Employment Law Specialty: Employment Law (Labour Relations), Employment Law (Workers' Compensation), Employment Law (Wrongful Dismissal). This proposal was dismissed during discussion of the Workers' Compensation Law Specialty on April 8, 1993.
- A.1.4. The Board heard from members of the Labour Law Specialty Committee and R.O. MacDowell of the Ontario Labour Relations Board.
- A.1.5. The Board was satisfied that the Committee had been sensitive to the labour practices of lawyers in various regions of the province in the preparation and revision of the Labour Law Specialty Standards. Discussion participants stated that, whereas there are not many labour law experts in each of the smaller communities, collectively there are a good number outside Toronto in many regions of the province.
- A.1.6. The Board was persuaded that there is a significant aspect of public protection associated with this highly specialized field because when a member of the public is in need of a labour lawyer, the individual must get the right advice and must get it quickly. The Labour Relations Board moves exceptionally fast, and typically the public may have two weeks to find a suitable lawyer. Although there is no limitation period, delay is a factor the Board considers. It is not unusual to find a member of the public appearing before the Board unrepresented, for example for a discharge for trade union activity, and this scenario most frequently applies to the non-Toronto public.
- A.1.7. Attached "A" is the Report of the Labour Law Specialty Committee dated June 1992 including the proposed Standards for Labour Law Specialists.

- A.1.8. Your Board recommends the approval of the Labour Law Specialty for immediate implementation. Following preparation of the application form, statement of reference and interviewer's report, a notice will be published in the Ontario Reports to advise the profession that the Labour Law Specialty Committee is ready to consider applications.
- A.2. INTELLECTUAL PROPERTY LAW SPECIALISTS - RELEVANCE OF QUALIFICATION TO PRACTISE BEFORE THE PATENT AND TRADE-MARK OFFICES
- A.2.1. The Board had previously considered a letter from Hugues Richard (President - Patent and Trademark Institute of Canada), which included the following comment:
- A.2.1.1 "We are concerned that a Certification Program run by one provincial law society ... could lead to the certification as specialists of lawyers who are not even qualified to practice before the Patent and Trade-Mark Offices, which is the area of expertise most often needed by unsophisticated clients."
- A.2.2. The Board noted Mr. Richard's concern on behalf of the P.T.I.C. membership (comprised of patent agents and trade-mark agents, some of whom are lawyers and a good number of whom are non-lawyers) and subsequently advised him that the Intellectual Property Law Specialty Committee would be asked to include the qualification to practise before the Patent and Trade-Mark Offices as a component of the Intellectual Property (Patent/Trade-Mark) Specialty Standards.
- A.2.3. Following consultation with the Intellectual Property Law Specialty Committee and further consideration, the Board concluded that the recommendation to make qualification to practise before the Patent and Trade-Mark Offices a component of the Intellectual Property Law Specialty Standards had been inappropriate for the following reasons:
- A.2.3.1. The Specialist Certification Program for Intellectual Property is designed to certify lawyers who have a special ability in intellectual property law whether as barristers or solicitors or both. For example, in patent law, many patent litigation lawyers do not practise in the Patent Office; conversely, many lawyers who do solicitor's work or agency work in the Patent Office do not do patent litigation. In the criteria for certification, there is no requirement for a Specialist to practice in the Courts or before the Patent Office. There is no requirement even to conduct one motion in one case in a lifetime. By the nature of the criteria, a Specialist does not have to do all things.
- A.2.3.2. Qualification to practise in the Patent and Trade-Mark Offices is not necessarily an indicator of special ability:
- A.2.3.2.1. To be qualified to practise before the Trade-Mark Office, a lawyer must become a trade-mark agent. To become a trade-mark agent, a lawyer need only apply and pay an annual fee. No examination and no experience in trade-mark law is required. Thus, to be qualified to practise before the Trade-Mark Office, a lawyer need not necessarily be competent to handle trade-mark matters.

- A.2.3.2.2. To be qualified to practise in the Patent Office, a lawyer must become a patent agent. To become a patent agent, a lawyer must pass examinations set by the Commissioner of Patents. To maintain the qualification to practise in the Patent Office, a lawyer need not do any patent agency work or practise before the Patent Office or resit the examinations.
- A.2.3.3. There is no risk that someone from the public will be misled by the Specialist Certification Board having certified a Specialist in Patent Law or Trade-Mark Law who is not also an agent. There is no doubt that a certified Intellectual Property (Patent) Specialist will be able to refer an inventor to a patent agent if, for whatever reason, the lawyer is unable to file the patent application. Most practitioners in this area are affiliated with a patent and trade-mark agency firm and have people available to provide the necessary expertise.
- A.2.3.4. Making agency qualification a requirement for Specialist certification would be seen to be a guarantee that the Specialist has the status or qualification to file and prosecute applications in the Patent and Trade-Mark Offices. That status, however, is already signified to the public by the designation of "trade-mark agent" and "patent agent". The mandate of the Specialist Certification Board is to assure the public that those lawyers bearing the "Intellectual Property (Patent/Trade-Mark) Specialist" designation has a special ability in patent and/or trade-mark law, and not that the lawyer is a patent and/or trade-mark agent.
- A.2.4. A supplementary letter will be issued setting out the Board's revised position and pointing out that while formal qualification as a patent or trade-mark agent is a factor that would be considered in assessing an application, it is not a necessary criterion.

B.  
ADMINISTRATION

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No items.

C.  
INFORMATION

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C.1. CERTIFICATION OF SPECIALISTS

- C.1.1. The Board is pleased to report the certification of the following lawyers as Civil Litigation Specialists:

R. Allan O'Donnell (of Toronto)  
Robert G. Schipper (of Toronto)

C.1.2. The Board is pleased to report the certification of the following lawyers as Criminal Litigation Specialists:

Hechter, William S. (of Toronto)  
McChesney, Bruce D. (of Toronto)

C.1.3. Convocation is reminded that each recommendation represents an extensive review procedure, including detailed peer assessment (references), interviews, and Committee and Board assessments.

C.2. ENVIRONMENTAL LAW SPECIALTY

C.2.1. Environmental Law was approved as a Specialty area by Convocation on September 28, 1990. Following consultation with members of the profession, the Environmental Law Specialty Committee submitted its final Report, including proposed Standards for certification of Environmental Law Specialists, to the Board in September 1991.

C.2.2. The Board debated for a number of months the suitability of implementing the Environmental Law Specialist Certification Program. Recognizing that Environmental Law is a specialty field in the practice of law, the Board approved in principle (in June 1992) the implementation of the Environmental Specialty and the proposed Standards as prepared by the Committee.

C.2.3. The Board was, however, of the opinion that an immediate implementation of the Environmental Law Specialty would create barriers to certification for many lawyers in the province who ultimately ought to be eligible for certification. The Board undertook to reconsider the matter in June 1993.

C.2.4. The Board heard from several leading environmental lawyers who set out their reasons for recommending the immediate implementation of the Environmental Law Specialist Certification Program, which included wide-spread support for the Program within the environmental bar and the significant aspect of public protection because of rapidly-changing developments in environmental legislation, limitation periods and court practice and the serious, long-lasting, and expensive implications of bad advice.

C.2.5. The tendering of work is a unique aspect of environmental law practice and the aspect of greatest concern to the Board. Premature implementation of this Specialty may result in more work and opportunity being directed to Toronto lawyers, which would be counter-productive to the commitment of the Board to ensuring access to each Specialty area for lawyers practising across the province.

C.2.6. The Board has set aside a special August meeting to debate the issues further.

25th June, 1993

C.3. IMPLEMENTATION OF WORKERS' COMPENSATION LAW SPECIALTY

- C.3.1. The Board was pleased to receive the attached ["B"] letter dated May 20, 1993 from S.R. Ellis, Chair - Workers' Compensation Appeals Tribunal, following the approval of the Workers' Compensation Law Specialist Certification Program in Convocation on April 23rd.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"R. Yachetti"  
Chair

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

- A-Item A.1.7. - Report of the Labour Law Specialty Committee dated June 1992 including the proposed Standards for Labour Law Specialists. (Attachment "A", Pages 1 - 8)
- C-Item C.3.1. - Letter from Mr. S.R. Ellis, Tribunal Chair, Workers' Compensation Appeals Tribunal to Mr. Roger Yachetti, Q.C. dated May 20, 1993. (Attachment "B")

THE REPORT WAS ADOPTED

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AGENDA: CATEGORY 6 - REPORTS OR SPECIFIC ITEMS REQUIRING CONSIDERATION AND APPROVAL BY CONVOCAATION

ADMISSIONS COMMITTEE

This matter was stood down.

DISCIPLINE COMMITTEE

Mr. Hill spoke to the item in the Discipline Report dealing with the Disclosure of Information to the Police.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of June, 1993, at three o'clock in the afternoon, the following members being present:

H. Strosberg (Chair), D. Bellamy, N. Finkelstein, N. Graham, C. Hill, J. Klotz, J. Lax, R. Murray, P. Peters, C. Ruby, D. Scott, and S. Thom.

S. Kerr, G. MacKenzie, J. Yakimovich, G. Macri, S. McCaffrey, C. Shaw, E. Spears, and S. Hodgett also attended.

A.  
POLICY

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A.1.           SUBCOMMITTEE ON DISCLOSURE OF INFORMATION TO THE POLICE

A.1.1.        In its Report to Convocation on October 23, 1992, this Committee reported that the Chair had appointed a subcommittee to consider the current policy regarding the disclosure of information by the Society to the police. The subcommittee was composed of The Honourable Mr. Justice John Arnup, Mr. Casey Hill, Mr. Gavin MacKenzie and Mr. Marc Rosenberg.

A.1.2.        Mr. Hill reported to the Committee. A report from the subcommittee is at Attachment A. The conclusions of the subcommittee are found at page A-5. The subcommittee unanimously concluded that the policy and guidelines previously adopted by Convocation should not be changed at this time.

A.1.3.        Your Committee recommends that the report of the Subcommittee on Disclosure to the Police be approved.

A.1.4.        The Chair spoke to a related matter concerning contact with the police. The police will from time to time contact the Society in the course of their investigations. This may or may not lead to disclosure by the Society. The Chair proposed that the Committee recommend that records be kept of these contacts and any disclosures, if any, which may result. This proposal is designed to track such contacts and to aid the Society in ascertaining whether further policies concerning the matter are necessary.

A.1.5.        Your Committee recommends that Convocation adopt the following policies:

1.       that staff be required to record in memorandum form all contacts made by the police with the Society;
2.       that the Senior Counsel Discipline continue to be the designated staff person making disclosure to the police, and that the Senior Counsel Discipline be required to maintain a record of any disclosure made.

B.  
ADMINISTRATION

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B.1.           DUTY COUNSEL BEFORE CONVOCATION

B.1.1.        In April 1993, Convocation adopted a recommendation from this Committee that a roster of duty counsel be developed to aid unrepresented solicitors at Discipline Convocation. Gavin MacKenzie, Senior Counsel Discipline, reported to the Committee concerning the implementation of this recommendation.

- B.1.2. Approximately thirty lawyers have responded to the notice published in the Benchers' Bulletin inviting lawyers to inform the Society if they would be willing to serve pro bono as duty counsel at Discipline Convocations.
- B.1.3. Mr. MacKenzie has spoken to each lawyer who has expressed an interest in serving in this capacity. It is apparent from the responses received that there is sufficient interest among qualified counsel to make the proposal workable.
- B.1.4. The following issues were considered by the Committee:
1. Several of the lawyers who have responded practise outside Metropolitan Toronto. A few have asked whether the Society will reimburse them for travel expenses if they agree to serve pro bono.
  2. One of the lawyers who responded asked whether duty counsel may be retained privately by solicitors whose cases are adjourned.
  3. The response received to the notice has been such that the Society may be selective in compiling a roster of duty counsel if it wishes. The experience of the lawyers who have responded varies widely. The roster should probably be large enough that the time commitment expected of each duty counsel is not excessive, yet small enough that each duty counsel acquires significant experience that will benefit unrepresented solicitors. A panel of approximately eight counsel might meet both of these objectives.
  4. Each of the lawyers who have responded have expressed their willingness to attend a training seminar. Mr. MacKenzie has suggested that the lawyers selected to serve as duty counsel be invited to attend a lunch time seminar on the day of the September special Convocation. Each of the proposed duty counsel would also be asked to sit in on the morning proceedings in Convocation, and the Chair and Vice-chairs of the Committee and perhaps one or more lawyers with significant experience appearing as counsel before Convocation could lead the seminar. Duty counsel could then start to serve in October.
- B.1.5. The Committee considered these issues and made the following decisions:
1. A budget for the reimbursement of travel expenses should be prepared by the staff in order to determine whether it is feasible to reimburse duty counsel who travel from outside Toronto for their travel expenses.
  2. The Committee appointed a subcommittee consisting of Ms. Denise Bellamy and Ms. Joan Lax to compile a roster of duty counsel.
- B.1.6. The Committee recommends that Convocation adopt a policy that duty counsel advising solicitors *pro bono* at Discipline Convocations be prevented from subsequently acting for the solicitor on the same discipline matter on the basis of a paid retainer.

C.  
INFORMATION

C.1. DISCLOSURE FROM THE CROWN AND POLICE TO THE LAW SOCIETY

C.1.1. Your Committee briefly discussed problems which are experienced by the Law Society obtaining disclosure from the Crown and the police in cases where members under investigation by the Law Society are also subject to criminal investigation or proceedings. The Committee requested that the staff prepare a report for the Committee concerning the law related to this issue.

C.2. JOHN HILL - APPLICATION UNDER RULE 20 TO EMPLOY DISBARRED LAWYER

C.2.1. Mr. John Hill applied in accordance with Rule 20 of the Rules of Professional Conduct to employ Nicolas Canizares, a former lawyer. The Committee deferred the consideration of Mr. Hill's application and has requested further information concerning the matter.

C.3. AUTHORIZATION OF DISCIPLINE CHARGES

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

C.3.2. The following table shows the number of requests made by Discipline, Complaints and Audit staff for the month of June, 1993.

	<u>Sought</u>	<u>Obtained</u>
<u>June</u>		
Discipline	3	3
Complaints	24	24
Audit	17	17
Total:	44	44

<u>Total number of charges authorized to date for 1993:</u>	
January	39
February	34
March	34
April	38
May	48
June	44
Total:	237

25th June, 1993

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"H. Strosberg"  
Chair

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

- A-Item A.1.2. - Copy of a letter from Mr. S. Casey Hill to Mr. Harvey Strosberg dated May 11, 1993 re: Discipline Policy Committee - Relating to Society Passing Information to the Police.  
(Attachment A - A-5)

FINANCE AND ADMINISTRATION COMMITTEE

Mr. Wardlaw presented for Convocation's approval Item B.-8 re: Suspension of Members - Late Filing Fee.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of June, 1993 at three o'clock in the afternoon, the following members being present: J.J. Wardlaw (Vice Chair in the Chair), A. Feinstein (Vice Chair), D. Bellamy, P.G. Furlong, R.D. Manes, R.W. Murray, P.B.C. Pepper and M.P. Weaver. Also in attendance were D.A. Crosbie, R.F. Tinsley, D.E. Crack, M.J. Angevine, D.N. Carey and T.O. Trihey, Benefits Consultant, MLH & A.

B.  
ADMINISTRATION

1. FINANCIAL REPORT

The Director presented a highlights memorandum for the General Fund and the Lawyers' Fund for Client Compensation for the ten months ended April 30, 1993.

Approved

2. APPOINTMENT OF THE PRIORITIES AND PLANNING COMMITTEE

The Chair recommended T. Bastedo as Chair, D. Bellamy, A. Feinstein, R. Murray and J. Wardlaw act as members of the Priorities and Planning Subcommittee.

The purpose of this subcommittee is to continue to review, in detail, the financial results for the current 1992/93 fiscal year and the upcoming 1993/94 fiscal year.

Approved

3. EXPENSES OF SPOUSES AT LAW SOCIETY FUNCTIONS

In January 1993 Convocation adopted the following policy with respect to the attendance of staff at Federation meetings at the Law Society's expense:

That, in addition to the three delegates (which includes the Treasurer) and the Director of Education, all of whose costs are paid for by the Federation of Law Societies, the Treasurer may select such staff as necessary to attend the Federation meetings.

This policy did not address the issue of spouses' expenses.

In respect of this, a motion has been placed before the Committee by Mr. P.B.C. Pepper as follows:

*"The Finance and Administration Committee confirms the following policy:*

1. *The Treasurer is the only person who may travel with a spouse at the expense of the Society.*
2. *No other person, whether a Bencher or a member of the staff of the Society, may travel with a spouse at the expense of the Society unless the Treasurer, in advance of the travel, authorises in writing to the Chair of Finance the reimbursement of the spouse's expenses.*
3. *Nothing herein is intended to affect the normal travel arrangements of Benchers and staff travelling alone."*

During its discussion, the Committee was advised by the Secretary's office that the following policies regarding attendance of spouses at Law Society functions are currently in place:

i. Federation of Law Societies

Some time ago, due to the importance social functions have at Federation meetings (President's Reception, dinner plus informal socializing) the Treasurer of the day felt it was important that staff and delegates take their spouses - inquiries made at the time of various presidents indicated Ontario was in a minority in not covering expenses.

ii. Spousal Dinners

Also some time ago, it was felt inequitable to have spousal dinners and impose the additional expense of travel and accommodation on out of town Benchers who wished to have their spouses/guests attend.

iii. Calls to the Bar

There is no stated policy concerning attendance of spouses at other functions including Convocation and Calls to the Bar.

The Committee deliberated the motion.

Defeated

The Chair will ask the Finance Committee to revisit the whole issue to establish a firm policy in September.

4. REQUEST FOR CONTRACT POSITION - LAWYERS' FUND FOR CLIENT COMPENSATION

The Lawyers' Fund for Client Compensation department has requested permission to contract additional counsel for a six month period for the purpose of assisting in advancing the resolution of a large inventory of claims. Total cost for this contract is \$35,000. This position was not included in the 1993/94 budget, however, there are sufficient monies available in the Lawyers' Fund for Client Compensation to cover this expenditure.

The Committee was asked to approve this request.

Approved

5. ERRORS OMISSIONS INSURANCE FUND - FUNDING

In order to ensure the continuity of Errors and Omissions Fund claim payments until the maturity of short term securities and receipt of the second half levies, the Investment Committee approved the formalization of a line of credit at a maximum amount of \$6,000,000.

As referred by the Investment Committee, the Committee was asked to approve the above.

Approved

6. EMPLOYEE BENEFITS - RENEWAL

A memorandum from the Director of Finance was before the meeting.

The Committee was asked to approve the renewal of the Employee Benefits on the terms set out in the memorandum.

Approved

7. FUNDING REQUEST - JOINT COMMITTEE ON COURT REFORM

The Joint Committee on Court Reform has made a submission to the Society for a funding request as follows:

July 1, 1993 - June 30, 1994	8% of \$192,800	=	\$15,424
July 1, 1994 - June 30, 1995	8% of 198,584	=	\$15,886
July 1, 1995 - June 30, 1996	8% of \$206,527	=	\$16,522

The full Activity Report and Funding Request from the Joint Committee along with a letter from Ms. Fran Kiteley was before the Committee.

Mr. Terrance O'Sullivan attended the meeting to respond to questions.

The Committee recommended that the request be approved on a year to year basis. The funding for the 1993/94 grant was approved to be paid out of 1992/93 funds .

8. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 9 members who have not complied with the requirements respecting annual filing and who have not paid their late filing fee.

In all 9 cases all or part of the late filing fee has been outstanding four months or more. The 9 members owe \$9,140 of which \$7,320 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 9 members be suspended on June 25, 1993, if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see page 124

9. MEMBERSHIP UNDER RULE 50

Retired Members

The following member who is sixty-five years of age and fully retired from the practice of law, has requested permission to continue his membership in the Society without payment of annual fees:

Leonard Walter Stewart Mississauga

His application is in order and the Committee was asked to approve it.

Approved

10. RESIGNATION - REGULATION 12

The following member has applied for permission to resign his membership in the Society and has submitted a Declaration in support. The member has requested that he be relieved of publication in the Ontario Reports.

Joseph Normand LaBarre of Manotick, was called to the Bar on April 19, 1978. He declares that he has practised with the Federal Department of Justice since August 1978. He is seeking permission to resign his membership because he does not intend to practise law again. He declares that he has never held trust funds or clients' property, and that all clients' matters have been completed and disposed of satisfactorily. He is not aware of any claims made against him. His annual filings are up to date.

His application is in order and the Committee was asked to approve it.

Approved

C.  
INFORMATION

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1. LEGAL MEETINGS AND ENTERTAINMENT

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

June 16, 1993	Judges' Dinner Convocation Hall
June 17, 1993	Legal Aid Barristers' Lounge
June 23, 1993	Criminal Lawyers Barristers' Lounge



A.  
POLICY

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1. INTERJURISDICTIONAL PRACTICE/NATIONAL COMPENSATION FUND

The Federation of Law Societies has had a committee working on the development of a protocol to govern the interjurisdictional practice of law in Canada. One of the aspects of the protocol is the development of guidelines for a national compensation fund plan to cover losses occasioned by lawyers when engaged in inter-provincial practice. The problem is that provinces have different caps and limits. For example Ontario has a limit of \$100,000 per claimant, British Columbia and Alberta have no limit, and New Brunswick has a limit of \$50,000. Several proposals have been put forward to overcome the problems but all have failed for various reasons. One reason is the lack of adequate insurance for such losses.

A proposal has now been put forward which is based on three propositions:

- 1) all provinces would obtain innocent partner coverage under their Errors and Omissions policies (Ontario already has this);
- 2) provinces without caps (Alberta, British Columbia, Saskatchewan and Manitoba) would agree to limits; and
- 3) a national compensation fund plan would be established at a cost of \$2 per member.

Briefly, under the scheme all governing bodies would ensure that their compulsory liability insurance policy includes "innocent insured" coverage extending to their members' interprovincial practice. In the event of a theft by a solicitor who was in a partnership, this would be the first line of recovery. Those provinces which do not have caps on their funds would agree to accept the limits in the insurance coverage (\$1 million per occurrence, \$2 million aggregate in any year).

If innocent partner coverage was not available then the home jurisdiction would process claims for compensation owing out of a member's inter-provincial practice according to its domestic compensation fund guidelines and determine the amount of each claimant's loss. The home governing body would then pay out of its own fund \$50,000 per claim with an aggregate limit of \$100,000 per member. If this does not fully satisfy the claims then the home governing body can apply to the national compensation fund for payment to a maximum of \$450,000.

The national fund will be created by a levy of \$2 per member and will be collected until the plan accumulates a balance of \$1 million. Thereafter, a levy will be made only when it is necessary to replenish the fund to \$1 million.

Colin McKinnon, the Law Society's member on the Interjurisdictional Committee and the Secretary, Richard Tinsley, who has also participated in the Intejurisdictional Committee's deliberations, attended the meeting to discuss the Federation's proposal. They explained the key to obtaining approval of the proposal for members to have temporary mobility to engage in the practice of law in another province was approval of the national compensation fund proposal.

Your Committee recommends that there be a contribution of \$2 per member towards a national compensation fund. Attached is the protocol setting out the details of the plan.

(Pgs. A1 - A4)

2. FORMS 4 and 5

Convocation of March 1992 adopted this Committee's Special Report on Reducing Defalcations with respect to the requirement that solicitors arranging mortgages for clients complete Forms 4 and 5. Regulation 15(b) was passed stipulating the obligation on the membership to complete the forms. The forms approved by Convocation were mailed to the members in October 1992 and printed in the Ontario Reports in November 1992. Revisions to the Regulation and Forms as a result of input received from the membership were discussed at a Special Meeting of the Committee in February 1993.

The draft revisions to the Regulation and Forms 4 and 5 were considered by the County & District Presidents Law Association at their spring meeting in May 1993. It had been agreed by the Treasurer that any revisions would not be acted upon until after the County & District Presidents meeting. The County & District Presidents agreed with these draft revisions with a few minor changes. A copy of the Resolution passed at the meeting is attached.

Mr. Dan Murphy attended the meeting to express his concerns with the Forms 4 and 5. It was his view the forms were too complicated and he was also critical of the requirement of having the member's accountant review the forms as part of the annual filing because of the additional cost to the member.

Your Committee recommends that Mr. Murphy suggest an exemption to the requirement of the Forms 4 and 5 for mortgage investments that do not affect the Lawyers Fund for Client Compensation. (Pg. A5)

B.  
ADMINISTRATION

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No items

C.  
INFORMATION

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1. REFEREE REPORTS AND STAFF MEMORANDA

The Referee Reports and Staff Memoranda that were approved by the Review Sub-Committee were before the Committee for information purposes only with the grants to be paid from the Fund shown on Schedule "A" of this report.

2. A copy of the Financial Summary as of April 1993 and graphs showing claims made, grants paid and outstanding claims are attached. (Pgs. C1 - C5)

3. Accounts approved by Assistant Secretaries in May amounted to \$56,759.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"C. Ruby"  
Chair

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

- C-Item 1 - Grants approved by the Review Committee and by the Lawyers Fund for Client Compensation Committee - June 10, 1993. (Schedule "A")
- A-Item 1 - Protocol for governing the interjurisdictional practice of law in Canada. (Marked A1 - A4)
- A-Item 2 - Copy of the Resolution of the draft revisions to the Regulation and Forms 4 and 5 passed by the County & District Presidents Law Association meeting in May 1993. (Marked A5)
- C-Item 2 - Financial Summary as of April 1993. (Marked C1 - C5)

THE REPORT WAS ADOPTED

DISCIPLINE COMMITTEE

Mr. Strosberg asked for Convocation's consideration and approval for requesting an underaking from Mr. Gavin MacKenzie, Senior Counsel-Discipline upon his joining the law firm of Davies, Ward & Beck and from Mr. John Laskin and of the firm Davies, Ward & Beck concerning the exchange of information regarding discipline matters conducted by Mr. MacKenzie.

It was moved by Mr. Strosberg, seconded by Mr. Scott that an undertaking be given by Mr. MacKenzie and Mr. Laskin to the Society upon Mr. MacKenzie's joining Davies, Ward & Beck.

Carried

Mr. Cullity did not participate in the discussion or vote.

THE REPORT WAS ADOPTED

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LEGAL AID COMMITTEE

Meeting of June 10, 1993

Ms. Kiteley presented Item A-1. re: Report of the Refugee Pilot Project Sub-Committee and Item A-1.2 re: Report of the Family Law Pilot Project Design Committee for Convocation's approval.

The Report was corrected to indicate that the Committee met on June 10 and not February 11, 1993.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February, 1993, the following members being present: Frances P. Kiteley, Chair, Messrs. Ally, Bond, Brennan, Mr. Carter, Ms. Campbell, Mr. Copeland, Mr. Durno, Ms. Kehoe, Messrs. Koenig and Petiquan.

Also present, Lorne Waldman, member of the Executive of the Immigration Sub-Section of the Canadian Bar Association.

A.  
POLICY

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1.1. REPORT OF THE REFUGEE PILOT PROJECT SUB-COMMITTEE

1.1.1 At Convocation in May 1992, a Resolution was passed as follows: "While Convocation does not support any change in the method of delivery of legally-aided family law services at this time, Convocation is nevertheless desirous of co-operating with the government in respect of its stated intention to establish family law clinics as pilot projects in order to examine and ascertain the advantages and disadvantages of such a system".

1.1.2 Subsequently, Robert Holden, Fran Kiteley, Phil Epstein, Joanna Kuras (referred to as the Law Society representatives) met with representatives of the Attorney General to pursue that matter. When meetings were undertaken, the representatives of the Attorney General asked that consideration also be given to the possibility of a pilot project using the staff model in refugee law.

The Law Society representatives declined to participate without investigating the need from the perspective of the Refugee Bar without a mandate from Convocation. Accordingly, the views of the Bar were canvassed by letter. Responses were received from Community Legal Services - Ottawa; Downsview Community Legal Services; Mendel M. Green; South Ottawa Community Legal Services; and West End Legal Services of Ottawa.

The Report to the Legal Aid Committee and Convocation was made in March. At that time, the Legal Aid Committee was authorized to "examine the feasibility of delivery of Legal Aid by a staff model to include not only members of the Legal Aid Committee, but representative consultation with members of the profession involved in this delivery."

1.1.3 The Legal Aid Committee created a Refugee Pilot Project Sub-committee to explore the means by which the staff model might be introduced. The report was received by the Legal Aid Committee on June 10, 1993. The Report was adopted by the Legal Aid Committee with requests for minor textual clarifications. Those clarifications have been approved by the Refugee Pilot Project Sub-committee and the final version of the Report is attached as Schedule "A".

1.1.4 The members of the Refugee Pilot Project Sub-committee and of the Legal Aid Committee were informed that the Ministry of the Attorney General representatives were committed to undertaking a Refugee Pilot Project delivering legal services through a staff model as a cost saving initiative. The members of the Refugee Pilot Project Sub-committee and of the Legal Aid Committee are reluctant to acquiesce in this alternate method of delivery; but are more reluctant to create a situation where the Ministry of the Attorney General undertakes the pilot project without the involvement of the Legal Aid Committee. The recommendations of the Report reflect the concerns of the Sub-committee and of the Legal Aid Committee and the necessity to ensure that fundamental principles are observed.

1.1.5 Convocation is asked to adopt the Report at Schedule "A".

1.2 REPORT OF THE FAMILY LAW PILOT PROJECT DESIGN COMMITTEE

1.2.1 As indicated above, in July 1992, Convocation passed a Resolution authorizing Clinic Funding and the Legal Aid Committee to co-operate with representatives of the Ministry of the Attorney General introducing the staff model as a method of delivery of Legal Aid in family law. Subsequently, Robert Holden, Fran Kiteley, Phil Epstein, Joanna Kuras joined four representatives of the Ministry of the Attorney General to create the Pilot Project Steering Committee.

1.2.2 The Pilot Project Steering Committee established the Family Law Pilot Project Design Committee with terms of reference which provided that the Design Committee should develop three pilot projects based on three models (see terms of reference).

1.2.3 The Family Law Pilot Project Design Committee includes representatives of the Legal Aid Plan, the Clinic Funding Committee, the Family Law Bar, intermediaries and advocates and one consumer (see membership). The Design Committee met on twenty-five occasions before completing its Report in early June 1993.

1.2.4 The Family Law Pilot Project Design Committee recommends:

1.2.4.1 in favour of a pilot project in a limited service model (for uncontested matters);

1.2.4.2 in favour of a pilot project in a Woman's Family Law Centre which would serve women only and would provide the wide range of legal and related services which the typical female matrimonial client requires;

1.2.4.3 against a pilot project which would provide only those services currently delivered pursuant to a Legal Aid Certificate.

1.2.5 The Legal Aid Committee considered the recommendation of the Family Law Pilot Project Design Committee. While the Design Committee is required to report to the Pilot Project Steering Committee, the Provincial Director and Chair of the Legal Aid Committee wanted to canvass the views of the Legal Aid Committee before progressing further. The Legal Aid Committee supports the Family Law Pilot Project Design Committee Report.

1.2.6 The text of the Resolution passed by the Legal Aid Committee will be circulated to Benchers at Convocation.

1.2.7 In view of the extensive debate at the Legal Aid Committee, the members of the Family Law Pilot Project Design Committee were asked to expand on one portion of the Report. They have done so and the final version of the Report is incorporated at Schedule "B".

1.3 LEGAL AID BUDGET

1.3.1 Attached as Schedule "C" is a copy of a memorandum dated May 5, 1993 from the Provincial Director to the Legal Aid Committee. This memorandum was circulated to Convocation in May 1993.

1.3.2 After the announcement by the Treasurer of Ontario on April 23, 1993, the Provincial Director asked all Area Directors and Senior Managers to consider options to reduce costs, including those identified by the Treasurer of Ontario and others. The following are examples of those which have been identified to date:

1.3.2.1 a new payment agreement policy may yield additional revenue of \$1,000,000;

1.3.2.2 Area Directors are participating in training to develop the skills required to conduct settlement conferences. A higher settlement rate will reduce trial costs;

1.3.2.3 the Plan had previously developed a plan which will be implemented during the summer of 1993 as a result of which a discount will be offered to encourage early payment of liens. This will increase the cash flow of the Plan albeit not to the extent contemplated by the Treasurer of Ontario in the current fiscal year.

1.3.2.4 the Plan, the Chair of Professional Standards Committee, the President of the Criminal lawyers Association, and the Treasurer of the Law Society have all participated in the design and implementation of a protocol to be applied in the Provincial Division (Criminal) in Toronto commencing July 1, 1993. The protocol calls for diversion, screening and Pre-Trials. As a result, the Legal Aid Plan will modify its policies to provide that a Legal Aid Certificate will be issued only to those charges which survive screening. As yet unquantified savings will follow.

1.3.3 The Provincial Director will report regularly to the Legal Aid Committee (and hence to Convocation) on the status of the budget.

B.  
ADMINISTRATION

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2.1 RECEIPTS AND DISBURSEMENTS FOR MONTH ENDING APRIL 30, 1993

2.1.1 The Legal Aid Statement of Receipts and Disbursements for the one month of the current fiscal (April 30, 1993) is attached and marked as Schedule "D".

2.2 PAYMENT OF SOLICITORS ACCOUNTS

2.2.1 The Report on the payment of solicitors accounts for the month of May 1993 is attached and marked as Schedule "E".

2.3 REVIEWS

2.3.1 The Report on the status of reviews in the Legal Accounts Department for the month of May 1993 is attached and marked Schedule "F".

2.4 NEW CERTIFICATE ANALYSIS

2.4.1 This Report, which is marked as Schedule "G" identifies the number of new Certificates issued and the percentage change from one time-frame compared to other relevant periods of time:

2.4.1.1 recent experience in the courts indicates a reduction in the number of cases being commenced. Further investigation is being undertaken to determine whether the reduction will have an impact on demand for Legal Aid;

2.4.1.1 the number of new Certificates issued in April 1993 is 6% higher than the number of new Certificates issued in April 1992;

2.4.1.3 the number of new Certificates issued in family law in April 1993 is 22.6% higher than the number of new Certificates issued in family law in April 1992;

2.4.1.4 however, the number of new Certificates in April 1993 is 13.3% less than the number of new Certificates in March 1993;

2.4.1.5 in each of the last three years, the number of Certificates issued in the month of April has been lower than the monthly average number of Certificates issued;

2.4.1.6 the number of Certificates issued from one month to another can vary by as much as 50%. Therefore, while too early to draw firm conclusions from the March/April 1993 statistics, it is encouraging to see a recent reduction.

2.5 AREA COMMITTEES

2.5.1 The following Appointments were approved:

Durham:	Allan W. Furlong, solicitor
Thunder Bay District	Roy B. Mitchell, retired provincial court judge
Wellington District:	Harry Perets, solicitor Elizabeth Ring-Cassidy, psychometrist

2.5.2 The following Resignation was accepted:

Peterborough:	Brenda E. Couch
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C.  
INFORMATION

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3.1 COMMISSION ON SYSTEMIC RACISM IN THE ONTARIO CRIMINAL JUSTICE SYSTEM

3.1.1 A Sub-committee has been formed, consisting of Paul Copeland and two lay members, namely Kathy Kehoe and Bruce Ally, to study the role which Legal Aid might play in responding to the request for submission by the Commission.

ALL OF WHICH is respectfully submitted

"F. Kiteley"  
Chair

June 15, 1993

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

- A-Item 1.1.5 - Report to the Legal Aid Committee of the Refugee Pilot Sub-Committee, June, 1993. (Schedule "A", pages 1 - 9)
- A-Item 1.2.9 - Report of the Family Law Pilot Project Design Committee, June 1, 1993. (Schedule "B", pages 1 - 49)
- A-Item 1.3.1 - Memorandum from Mr. Robert Holden to the Members of the Legal Aid Committee dated May 5, 1993. (Schedule "C", pages 1 - 2)
- B-Item 2.1.1 - Legal Aid Statement of Receipts and Disbursements for one month ended April 30, 1993. (Schedule "D", pages 1 - 2)
- B-Item 2.2.1 - Report on Payment of solicitors accounts for the month of May 1993. (Schedule "E", pages 1 - 2)
- B-Item 2.3.1 - Report on status of reviews in the Legal Accounts Department for month of May 1993. (Schedule "F")
- B-Item 2.4.1 - Report on New Certificate Analysis, Type of Legal Aid. (Schedule "G")

THE REPORT WAS ADOPTED

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:30 P.M.

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CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

Treasurer (Paul Lamek), Bastedo, Bellamy, Brennan, R. Cass, Cullity, Elliott, Finkelstein, Goudge, Graham, Hill, Kiteley, Lawrence, Lax, McKinnon, Murphy, S. O'Connor, Richardson, Scott, Sealy, Thom, Wardlaw and Weaver.

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LEGAL EDUCATION COMMITTEE

Meeting of June 10, 1993

Mr. Brennan presented Item A.-A.1 re: Issue Related to Examination Administration in the Bar Admission Course and Item A.-A.4 (Supplementary Report) re: Articling Interview Guidelines Project for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Thursday, the 10th of June, 1993, at 10:30 a.m.

The following members were in attendance: Paul Lamek (Chair), Thomas Bastedo, Lloyd Brennan, Susan Elliott, Stephen Goudge, Vern Krishna, Colin McKinnon, Ross Murray, Louis Radomsky (non-Bencher member), Marc Somerville. Staff in attendance were: Katherine Corrick, Barbara Dickie, Brenda Duncan, Holly Harris, Mimi Hart, Alexandra Rookes, Alexis Singer, Alan Treleaven.

A.  
POLICY

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- A.1            ISSUE RELATED TO EXAMINATION ADMINISTRATION IN THE BAR ADMISSION COURSE
- A.1.1        This item was considered by Convocation at its May 28, 1993 meeting. Because of important issues that were raised in the debate, the Chair of the Legal Education Committee asked the Treasurer to have the matter referred back to the Legal Education Committee for further consideration.
- A.1.2        The following section of the Requirements for Standing governing Phase Three of the Bar Admission Course provides staff with discretion to modify examination procedures for disadvantaged students:
- 8.1           Special Procedures for Disadvantaged Students
- A student who is disadvantaged by a personal circumstance beyond the student's control may be permitted, at the discretion of the Registrar or alternate, to satisfy the Examination, Computerized Accounting Examination, or Course Work requirement by procedures that will minimize the disadvantage as much as reasonably possible...
- 8.2           Application to Registrar or Alternate
- A disadvantaged student must apply in writing to the Registrar or alternate, and meet the following requirements:
- (1)    Apply in sufficient time before the Examination, Computerized Accounting Examination, or the Course Work to permit adjustments to be made.
  - (2)    Satisfy the Registrar or alternate that a personal circumstance beyond the student's control that is not employment-related disadvantages the student.
  - (3)    Describe procedures that will minimize the disadvantage as much as reasonably possible.
  - (4)    Submit any documentation the Registrar or alternate requires.
- A.1.3        In instances where students can reasonably establish that they are disadvantaged in the examination process by a learning disability, medical disability, physical disability or psychological disability, students are permitted to satisfy the examination requirement with appropriate modifications to the normal procedures. The appropriate modification depends on the individual facts, and typically results in the examination being written with an extension of time, written in a private or alternate location, or taken orally. The intention is that students will be able, with an appropriate modification in the examination procedures, to demonstrate their lawyering ability.
- A.1.4        In 1992 a few students requested extra time to write examinations, on the basis that their first language was neither English nor French, and that this resulted in their being disadvantaged in the examination process. The Bar Admission Course is being asked in such situations to grant extensions of time to account for the language disadvantage.

A.1.5 The Legal Education Committee has discussed whether an extension of time in an examination should be permitted for students who assert that they are disadvantaged because neither English nor French is their first language. The Committee has considered whether such an accommodation should be made, and has included in its deliberations a discussion of whether passing an appropriate language pre-test would be required in order for students to obtain an extension of time for writing examinations. The Committee at its May 6 meeting concluded that superior proficiency in either English or French is an essential skill for the effective practice of law, and that accordingly students would not be granted an extension of time in writing examinations, or any other accommodation, solely on the basis of their being at a disadvantage in either English or French.

A.1.6 At its June 10 meeting the Legal Education Committee reconsidered the matter and determined that for 1993 it would vest in the Director of Education a discretion to grant an extension of examination time where the Director is satisfied that the student is sufficiently proficient in English or French to practice law effectively. The Director's discretion will be exercised on the basis of the student's performance in Phase One and on the basis of such other evidence as the Director may require.

A.1.7 Recommendation: It is recommended that the Director of Education have a discretion to grant an extension of examination time where the Director is satisfied that the student is sufficiently proficient in English or French to practise law effectively, and that the Director's discretion be exercised on the basis of the student's performance in Phase One and on the basis of such other evidence as the Director may require.

A.2 ARTICLING PLACEMENT UPDATE

A.2.1 Mimi Hart, Director of Financial Aid and Placement, reports that in January 1993, the Society's Placement Office was aware of 155 students without an articling position for the 1993-1994 articling year (13.5% of the incoming Phase One class). With the assistance of the Law Deans, in April 1993, Ms Hart's office conducted a survey of third year law graduates to obtain specific information about the unplaced students. At that time, 85 students reported being without articles (6.8% of the incoming class of Phase One). During Phase One of the Bar Admission Course, the Placement Office conducts another survey of students to obtain updated information on the numbers who remain unplaced. As of this June 7, 28 of the 420 students enrolled in Phase One in the first (May) session have reported that they continue to seek articles. This represents 6.6% of the May class.

A.2.2 In light of the report in A.2.1. above, Ms Hart is seeking the Committee's approval to re-instate in 1993 the special efforts undertaken in 1992 by the Placement Office to assist unplaced students. The Committee is asked to approve for 1993 the recommendations of the Placement Policy Group of the Articling Subcommittee approved in 1992 by the Legal Education Committee and Convocation, with appropriate changes as to dates. Such approval will enable the Placement Office to undertake a campaign of letter writing and telephoning the profession in an effort to generate additional placements. It will also re-affirm the Society's policy with respect to arranging placements.

A.2.3

Recommendation: It is recommended that:

- a) The Law Society not guarantee to arrange articling positions for students, but continue to use its resources to assist students to secure articling positions.
- b) The Placement Office of the Law Society inform members of the profession, in writing, that a number of students have not secured an articling position for the 1993-1994 articling term and request that firms contact the Placement office if they are able to offer an additional articling position (for the full twelve month term or a part thereof).
- c) If the Placement office is aware of unplaced students on August 1, 1993, it contact members and firms directly to request assistance in resolving the problem in the current year.
- d) The number of students seeking articles for the 1993-1994 year who register with the Law Society's Placement Office and who continue to seek articles as of September 1, 1993 be reported to the Legal Education Committee at its September meeting.
- e) The Legal Education Committee consider in September whether additional methods of assisting students are necessary and appropriate.
- f) The Law Society through its existing resources make efforts to assist students with special needs to compete fairly in the articling recruitment process.
- g) With the exception of activities undertaken pursuant to (f), the Law Society provide its placement services equally to all students and not give precedence to any category of student.
- h) The Law Society ensure its continuing involvement in any situation in which the articling commitment is withdrawn or termination of the articling relationship is contemplated by continuing to impose a requirement that such situations be reported to the Law Society. The prime objective of the Law Society in these cases will be to repair the relationship, if possible, and to ensure that each party meets its obligations.

A.3

PHASE THREE REQUIREMENTS FOR STANDING: 1993

A.3.1

A draft of the Requirements for Standing to govern Phase Three of the 1993 Bar Admission Course is attached. (pages 1 - 8)

A.3.2

The Requirements for Standing are the academic rules which govern Phase Three of the Bar Admission Course. The substance of the draft Requirements for Standing is essentially the same as for 1992, with the exception of section 4.5, a new section that provides appeals from the failure of examinations. Appeals from failure of examinations were not permitted in 1992.

A.3.3

Recommendation: It is recommended that the Requirements for Standing: Phase Three 1993: 35th Bar Admission Course be approved.

B.  
ADMINISTRATION

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Nothing to report this month.

C.  
INFORMATION

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C.1            MANDATORY CONTINUING LEGAL EDUCATION

C.1.1        The Continuing Legal Education Subcommittee, chaired by Colin McKinnon, presented its draft report entitled "Mandatory Continuing Legal Education: Should It Be Introduced In Ontario?" to members of the Legal Education Committee prior to the Committee's May 13, 1993 meeting. A previous draft was distributed for comment and suggested revision to past and present members of the Continuing Legal Education Subcommittee who have been involved in considering the issue of implementing mandatory continuing legal education in Ontario. Mr. McKinnon, having received a number of comments and suggested revisions from members of his Subcommittee, made revisions and included those revisions in the draft which has been provided to the Legal Education Committee.

C.1.2        In light of the complexity and importance of the issues, the Legal Education Committee decided to schedule a special meeting of the Legal Education Committee and the full membership of the Continuing Legal Education Subcommittee that had produced the draft report.

C.2            BAR ADMISSION COURSE STUDENT REQUEST FOR SPECIAL EXEMPTION

C.2.1        A Bar Admission Course student, enrolled in Phase One, session two from June 7 to June 30 inclusive asked by letter to be exempted from all role-play activities and testing in Phase One on the basis of an inability to complete a role-play.

C.2.2        For the purposes of the Bar Admission Course, a role-play involves a student in participating in an oral activity that requires the student and other individuals to assume the role of a lawyer, client or judge.

C.2.3        Role-plays are the primary vehicle for training and testing students in Advocacy, Interviewing, and Negotiation. The effect of granting the request would be that the student would be excused from the following:

- 1)    Advocacy: Participating in mock court appearances that teach and test Advocacy Skills,
- 2)    Interviewing: Participating in mock interviews that teach and test interviewing skills,
- 3)    Negotiation: Participating in mock negotiations that teach Negotiation Skills.

C.2.5 The Director considered denying the request on the basis that the student was refusing to complete role-plays and the student's obvious disapproval of role-playing activities. The Director was, however, concerned about the possibility that the student exhibits a disability which calls for some reasonable accommodation. The Director by letter asked the student for further information. The student's reply did not provide any further explanation as to the problem, and neither of the student's letters actually used the term "disability". A doctor's letter, however, refers to a "medical condition", without using the term "disability" and without providing any concrete information. The doctor indicates that patient confidentiality prevents him from disclosing further information. The Director is also concerned that forcing the student to participate in role-play activities could have an unreasonably negative impact on the classroom experience for other students and for the Instructors.

C.2.6 The Legal Education Committee decided to grant the student's request based on the information provided in the doctor's letter, and subject to the student complying with the following conditions:

- 1) Completing such alternative educational programs as the Director of Education prescribes, fully and in a professional manner.
- 2) Obtaining a Pass grade on such alternative Skills Assessments as the Director of Education prescribes.
- 3) The Director of Education being satisfied on the basis of a written report from the student's articling principal that the student has demonstrated satisfactory skills in Advocacy, Interviewing, and Negotiation during the articling year, and the Director being able to obtain such further information from the articling principal as the Director of Education finds necessary.

C.3 ARTICLING SUBCOMMITTEE

C.3.1 The Subcommittee met at 8:00 a.m. on May 28, 1993. In attendance were Marc Somerville (Chair), Stephen Goudge, Janne Burton, and Dora Nipp. Staff members attending were Marilyn Bode, Deborah Brown, and Mimi Hart.

C.3.2 The Subcommittee gave conditional approval to a further 19 applications from prospective articling principals for the 1992/93 articling year. To date, approximately 1335 members of the profession have applied. The Subcommittee also gave conditional approval to an additional 63 applications from prospective articling principals for the 1993/94 year. To date, approximately 854 members have applied to serve as principals for the 1993/94 articling year.

C.3.3 The Subcommittee considered the applications for approval for the 1993/94 articling term of three members from the same firm. Two of those applications were approved. Each member had some negative history with the Law Society. The Subcommittee did not consider the history significantly negative to deny the members' applications. However, the Articling Subcommittee noted the number of complaints lodged against various members of the firm, including the two senior partners in the firm, one of whom has applied. That concern will

be noted in the letter acknowledging approval to the senior partner of the firm. A third member in the firm has an authorized complaint against her. Her application for approval for the 1993/94 year has been deferred. Another member of the firm will be invited to apply. The Articling Subcommittee will be monitoring the ongoing status of this firm with the Law Society.

- C.3.4 The Subcommittee considered the application of another member for the 1993/94 articling term. The member's application had been approved at the September 1992 meeting of the Subcommittee. A complaint has recently been authorized by the Chair or Vice-Chair of Discipline against the member. The matter is to proceed in July 1993. The Subcommittee will monitor the outcome of the disciplinary proceedings and consider its impact on the ability of the member to serve as an articling principal. The member will be notified of the Subcommittee's awareness and monitoring of the Discipline matter.
- C.3.5 The Subcommittee considered an application for principal approval for the 1992/93 articling year. The member was authorized to participate in the Practice Review Programme in February of 1992. The member is currently supervising an articling student. However, there is another member who shares space with the applicant who could serve as the articling principal to the student. Section 4.2.2. of the Proposals for Articling Reform states that members who have been authorized to participate in the Practice Review Programme within the five-year period immediately preceding the application date will generally be denied the privilege as serving as articling principal. The application was denied.
- C.3.6 The Subcommittee considered two policy matters. One matter involved the termination of two articling students by their firms. In the first case, the firm had a number of concerns regarding the articling student's performance and the student's extreme delay in the submission of dockets. The firm had contemplated terminating the articling contract for the 1992/93 term and had consulted with the Articling Director. In a meeting held at the firm's office, the principal, the student and the Articling Director agreed that the student's employment would continue. The student was to be absent from the firm on a one-week holiday commencing the day after the meeting. Upon the student's return from holidays, the firm terminated the articling contract.
- C.3.7 No new issues had arisen between the firm and the student during the student's holiday period. The Articling Director expressed her surprise at the actions of the firm and asked for their explanation. Voluminous correspondence was exchanged between the firm and the Articling Director. All correspondence was before the Articling Subcommittee at its May meeting. The Articling Subcommittee expressed grave concern over the unilateral action of the firm. To date, the student has not located other articles. The student has retained counsel. Statements of Claim and Defence have been exchanged. The Subcommittee instructed the Articling Director to notify the firm of its disappointment in the handling of the matter.

- C.3.8 In the second case, the articling principal contacted the student in April of 1993. The student was to commence articles in the summer of 1993. The principal made reference to "economic difficulties" and advised the student that the principal would not be able to honour the articling commitment for the 1993/94 articling term. The student contacted the Articling Director's office. The Articling Director wrote to the principal asking for written evidence of the economic circumstances of the firm and an explanation of the withdrawal of the articling commitment. The student was no longer interested in articling with the principal. Therefore, the Articling Director also asked the principal to provide a letter to the student indicating that the student was without an articling position through no fault of the student. The Articling Director's correspondence and the reply of the articling principal was before the Articling Subcommittee at its May meeting. The student located another articling position for the 1993/94 year. The Subcommittee instructed the Articling Director to notify the articling principal of its grave concern over the principal's actions.
- C.3.9 The Articling Subcommittee will be reviewing the existing guidelines and policies of the Law Society regarding termination of students. The Subcommittee noted that the Articles of Clerkship form has been recently revised by the Articling Director to require principals contemplating a withdrawal or termination of the articling commitment to notify the Articling Director in advance of the withdrawal or termination. Further recommendations regarding the handling of these matters may be made by the Articling Subcommittee in the future.
- C.3.10 The second policy item relates to a sole practitioner who offered a position to a student for the 1993/94 articling year. The Articling Subcommittee first considered the matter at its April 1993 meeting. The Legal Education Committee was advised of the matter at its May 1993 meeting. The issue was one of space. The lawyer practises law out of her home. She has a tiny office. She has advised the Articling Director that it will not accommodate a desk or even a chair for the student. The lawyer is prepared to hire the student provided that he work out of his home or the library for the articling year. She would be available by phone every day and would meet with the student, at a minimum, every Monday morning at 9 a.m.
- C.3.11 No articling student has ever been hired on this basis. Approving this request would set a precedent. The principal assured the Articling Director that she can provide an appropriate articling experience for the student. Both the student and the principal indicated that they will remain in close contact during the articling year.
- C.3.12 Much learning in the articling environment takes place by the student participating in and observing the day-to-day activities of a law office. Clearly this type of learning is difficult, if not impossible, to provide where the student does not share office space with the principal. This concern was expressed to both student and principal. When pressed, the lawyer indicated that she could meet with the student for an hour or so each morning "but he'll have to sit on the floor --- there is simply no room".

- C.3.13 The Subcommittee requested further information about the extent of contact between the principal and student during the year before making its decision. The lawyer provided additional information to the Articling Subcommittee for its May meeting. The Subcommittee does not believe the extent of the contact is sufficient. It denied approval of the articling position for the 1993/94 term.
- C.3.14 A similar request was received for another 1993/94 articling position. The experience offered was in only one of the 13 skills areas (ie. research) listed in the Proposals for Articling Reform. The position was to be on a part-time basis with the student spending less than one quarter of the student's time in the office. The Subcommittee noted that there appeared to be no reason why the firm could not provide a much broader articling experience to the student. That comment will be passed on to the firm by the Articling Director.
- C.3.15 The Subcommittee considered two information items. The first matter was the Articling Interview Guidelines Project. Mimi Hart updated the Subcommittee on the status of this matter. She advised that there would be interim guidelines for appropriate questions available in time for the recruitment cycle in Metropolitan Toronto in August of 1993. More detailed recommendations regarding this issue will be developed for approval by the Legal Education Committee in the fall of 1993.
- C.3.16 The second information item related to the issue of students still seeking articles for the 1993/94 articling term. Ms. Hart advised the Subcommittee of recommendations which were before the Legal Education Committee at its May 1993 meeting.
- C.4 ARTICLING PROCEDURES REVIEW SUBCOMMITTEE
- C.4.1 The Articling Procedures Review Subcommittee, chaired by Philip Epstein, met on Wednesday, May 12. The Subcommittee reviewed and finalized a draft survey designed to gather data and opinions from Phase One students on the effectiveness of the existing articling recruitment process, including but not limited to the effectiveness of the Matching Program.
- C.4.2 The Subcommittee intends to carry on with its review of the articling recruitment process to determine how its effectiveness can be enhanced, with a particular focus on the Matching Program.
- C.4.3 The Subcommittee intends to report to the Legal Education Committee in the Fall of 1993.
- C.5 BAR ADMISSION COURSE FINANCIAL ISSUES SUBCOMMITTEE
- C.5.1 The Bar Admission Course Financial Issues Subcommittee met on May 12, 1993, with the following members in attendance: Paul Lamek (Chair), Tom Bastedo, Lloyd Brennan, Dean Donald McRae, Ross Murray, and Louis Radomsky. The following staff were in attendance: Erika Abner, Marilyn Bode, Deborah Brown, David Crack, Holly Harris, Mimi Hart, Margaret McSorley, and Alan Treleaven.
- C.5.2 The Subcommittee continued its review of possible alternatives to the current Spence model, and in particular examined the possibility of adapting the British Columbia, Nova Scotia, and United States (with the addition of articling) models to Ontario.

25th June, 1993

- C.5.3 The Subcommittee asked the Director to prepare a draft study paper for the Legal Education Committee explaining the Subcommittee's tentative conclusions, and to include an analysis of possible sources of funding.
- C.5.4 The draft study paper is being circulated to the Subcommittee, and will be presented in final form to the Legal Education Committee at its September meeting.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"P. Lamek"  
Chair

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

A-Item A.3.1 - Draft of the Requirements for Standing, Phase Three 1993:  
35th Bar Admission Course. Pages 1 - 8)

Mr. Bastedo wanted it noted that he opposed the recommendation on the basis of arguments raised both at a previous Convocation and at the Committee meeting.

THE REPORT WAS ADOPTED

Meeting of June 23, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

SUPPLEMENTARY REPORT TO CONVOCATION

The LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee held its second June 1993 meeting on Wednesday, the 23rd of June, 1993 at 4:30 a.m.

The following members were in attendance: Paul Lamek (Chair), Lloyd Brennan, Susan Elliott, Ross Murray, and Marc Somerville. Bencher Denise Bellamy also attended. Staff in attendance were: Barbara Dickie, Mimi Hart, Alexandra Rookes, Alexis Singer and Alan Treleaven.

A.  
POLICY

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A.4            ARTICLING INTERVIEW GUIDELINES PROJECT

A.4.1           Following articling student interviews in 1992, the Law Society received reports from students that some lawyers conducting articling interviews were asking questions that appeared to contravene the Ontario Human Rights Code and Rule 13 Commentary 5 of the Professional Conduct Handbook. Mimi Hart, Director of Financial Aid and Placement, is working with a Subcommittee of the Equity Committee, chaired by Denise Bellamy, to produce guidelines for the profession to ensure the interview process is free of discrimination.

A.4.2           A Report to Convocation with recommendations will be drafted by the Bellamy Subcommittee. Input will be sought from the Articling Subcommittee, the Women in the Legal Profession Committee, the Equity Committee, the Law Deans and other interested groups and individuals. It is expected that the proposed final Report with recommendations will be presented to the Legal Education Committee in October, 1993. This time-frame will permit the recommendations approved by Convocation to be in place for Summer and Articling Student Recruitment conducted in 1994.

A.4.3           In the meantime, interim guidelines have been developed by the Legal Education Committee to be in place for the articling recruitment process taking place in summer 1993. (pages 1 - 6)

A.4.4           Recommendation: It is recommended that Convocation approve the interim guidelines for the articling recruitment process taking place in summer 1993.

B.  
ADMINISTRATION

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No items in this supplementary Report.

C.  
INFORMATION

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C.6            BAR ADMISSION COURSE STUDENT REQUEST: NUMBER ONE

C.6.1           The student is currently articling, having been admitted to the Bar of British Columbia in August of 1992 after completing its 10 week skills based bar admission course (the Professional Legal Training Course) and 40 weeks of articling in British Columbia. The student has been required to complete six months of articles in Ontario and satisfied that requirement in early March of 1993. The student is now carrying on voluntarily with articling until the commencement of the Bar Admission Course teaching term. The student has also been permitted, according to standard policy of the Articling Subcommittee, to complete the Ontario articling requirement at the outset, and is now required to complete Phases One and Three consecutively.

- C.6.2 The student asks for an exemption from Phase One, asserting that the experience in British Columbia and Ontario would make Phase One of "no value" to the student.
- C.6.3 The Legal Education Committee, with the approval of Convocation, has been consistently requiring Bar Admission Course students who are members of other Canadian bars but who have practised law for less than one year to complete a six month articling requirement and both Phase One and Phase Three. The rationale for requiring completion of Phase One is that it is a skills program that will be of value in Phase Three and in the practice of law. The Committee in the past has determined that it does not wish to assess the merits of the bar admission process in different provinces and therefore has not accorded any advantage in the process to students from substantially skills based programs, such as in British Columbia.
- C.6.4 The Legal Education Committee decided that the student must satisfactorily complete Phase One of the Bar Admission Course as a pre-requisite to commencing Phase Three.
- C.7 BAR ADMISSION COURSE STUDENT REQUEST: NUMBER TWO
- C.7.1 The student seeks exemption from Phase One of the Bar Admission Course on the basis that, although the student has not practised law in Nova Scotia, the student will have been admitted to the Bar of Nova Scotia having completed a program that substantially contained the same coverage as Phase One (and is substantially the same as the British Columbia program). The student's request is based on the same set of circumstances as in item C.6 except that the student will not be articling in Ontario until immediately following Phase Three. For purposes of dealing with the student's request, however, it should be handled in the same manner as item C.6.
- C.7.2 The Legal Education Committee decided that the student must satisfactorily complete Phase One of the Bar Admission Course as a pre-requisite to commencing Phase Three.
- C.8 BAR ADMISSION COURSE STUDENT REQUEST: NUMBER THREE
- C.8.1 The student commenced the teaching term of the Bar Admission Course in 1990, the last teaching term of the "old" Bar Admission Course. The student withdrew from the teaching term due to illness, but was informed that because of the two examination failures that the student would stand as failed in the Bar Admission Course.
- C.8.2 In 1991 the student returned to complete the academic portions of the "new" Bar Admission Course. The student's initial attempt at Phase One was unsuccessful, but through remedial work the student attained a Pass standing. The student entered Phase Three in 1991 and failed four examinations. On the basis of failing the four examinations, the student failed a second attempt at Phase Three of the Bar Admission Course.
- C.8.3 The student requests permission to re-attempt Phase Three in 1993.
- C.8.4 The applicable Requirements for Standing stipulate that the student must obtain the Legal Education Committee's approval to attempt Phase Three once again, and that the approval must be on the basis of satisfying the Legal Education Committee by written application that a significant change in circumstances will likely result in successful completion of Phase Three.

C.8.5 The Legal Education Committee found that there was no evidence of such a significant change in circumstances, and that the student's request to attempt Phase Three in 1993 should be denied.

C.9 BAR ADMISSION COURSE STUDENT REQUEST: NUMBER FOUR

C.9.1 The student wrote a second supplemental examination in Criminal Procedure on Wednesday, April 21, 1993, and received a failing grade. Pursuant to section 4.3 (c) of the applicable Requirements for Standing, approved by Convocation, the grade received is "...the final grade. There is no appeal and no circumstance under which a further Supplemental Examination may be written."

C.9.2 During Phase Three the student obtained the following examination grades: Business Law, Fail; Civil Litigation, Pass; Criminal Procedure, Fail (initially Conditional); Estate Planning, Pass; Family Law, Fail (initially Conditional); Professional Responsibility, Pass; Public Law, Pass; Real Estate, Pass. The student obtained the following results in the first supplemental examinations: Business Law, Fail; Criminal Procedure, Fail; Fail Law, Fail. In a set of second supplemental examinations, the student obtained the following grades: Business Law, Pass; Criminal Procedure, Fail; Family Law, Pass.

C.9.3 The student requests on compassionate grounds that the student's grade in Criminal Procedure be raised. The consequence of the student's request being denied is that the student stands failed in Phase Three of the Bar Admission Course and is required to repeat Phase Three in its entirety.

C.9.4 The Requirements for Standing do not provide any exception for the student based on compassionate grounds. The student was permitted to write second supplemental examinations in Business Law, Criminal Procedure and Family Law based on compassionate grounds, but the above-quoted section 4.3(c) dictates that the student has now finally failed Phase Three.

C.9.5 The Legal Education Committee decided to deny the student's request for a Pass or Conditional Pass grade in Criminal Procedure, and confirmed that the student would be required to repeat all of Phase Three.

C.10 BAR ADMISSION COURSE STUDENT REQUEST: NUMBER FIVE

C.10.1 The student failed Phase Three of the Ontario Bar Admission Course by having failed five out of nine examinations. The student was not entitled to write supplemental examinations.

C.10.2 The student is therefore required to repeat Phase Three, and in so doing must, pursuant section 3.0 of the applicable Requirements for Standing, repeat all of Phase Three:

A student who does not satisfy the requirements for successful completion of Phase Three may repeat Phase Three once, and in so doing must repeat Phase Three in its entirety.

C.10.3 The Director of Education and the Legal Education Committee have been consistent to date in requiring students who repeat Phase Three to repeat the program in its entirety, without exemption from any of its requirements.

C.10.4 The Legal Education Committee confirmed that the student must complete Phase Three in its entirety.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"P. Lamek"  
Chair

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

A-Item A.4.3 - Interim guidelines for the articling recruitment process for the summer of 1993. (Pages 1 - 6)

It was moved by Mr. Finkelstein, seconded by Mr. McKinnon that for the purposes of the interim guidelines the words "and is professional misconduct" at page 4, third paragraph, be deleted.

Lost

It was moved by Ms. Elliott, seconded by Ms. Kiteley that instead of deleting the phrase "and is professional misconduct" that the words "may be professional misconduct" be substituted.

Carried

THE REPORT AS AMENDED WAS ADOPTED

RESUMPTION OF THE EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of June 10, 1993

The main motion as amended would then read:

"requiring billable hours or workload expectations that necessitate a long work week, which effectively excludes those who have child-care responsibilities and adversely impacts such persons on the basis of family status or sex."

Carried

THE REPORT AS AMENDED WAS ADOPTED

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WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of June 10, 1993

Item A.-A.1. re: Draft Rule on Non-Discrimination was dealt with along with the same item in the Equity Report.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 10th of June 1993 at 11:30 a.m., the following members being present: S. Elliott (Chair), S. Goudge, J. Lax, F. Mohideen, and J. Monaghan

Also present: J. Herbert, E. Spears, G. Zecchini and S. Hodgett

A.  
POLICY

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A.1. DRAFT RULE OF PROFESSIONAL CONDUCT ON NON-DISCRIMINATION

A.1.1. Your Committee reviewed the draft Rule of Professional Conduct on Non-Discrimination prepared by the Equity Committee. Stephen Goudge, the Chair of Equity, spoke to the Committee concerning the draft Rule.

A.1.2. The Committee understands that the draft Rule will be reviewed by Convocation with a recommendation from the Equity Committee that it be circulated to the profession. The Rule will be circulated at this stage so that the profession may comment about the concepts contained in the draft Rule.

A.1.3. The Women in the Legal Profession believes that it is important for there to be a full discussion of all the issues surrounding discrimination in the profession. This includes a number of issues of direct concern to this Committee.

A.1.4. The *Transitions Report*, adopted by Convocation in April 1991, contains recommendations which are relevant to this discussion. The following statement is found at page 109 of the *Transitions Report*:

*The Women in the Legal Profession Committee notes the responses from women and men, expressing dissatisfaction with the lifestyle that appears to be demanded of them if they are to practise law. In particular, the Committee notes the responses which comment on the impact upon personal and family life. Research has been conducted by other organizations which shows that, over the past twenty years, there has been a significant increase in the number of women who have young children and who are, at the same time, full-time in the workforce. The Committee sees these as issues which are not restricted to women. They are human issues which entail major changes for both sexes.*

A.1.5. The balance between work and family life not only relates to dissatisfaction with the practice of law, but may also lead to discrimination based on family status or sex. The Committee believes that this is an issue which requires full and frank discussion within the legal profession.

A.1.6. The Committee therefore resolved to ask that the draft Rule of Professional Conduct on Non-Discrimination be circulated to the profession containing the phrase in the second paragraph below, which appeared in Commentary 8 of a previous draft but was removed as being too debatable.

8. *Discrimination may be inadvertent, or for ostensibly protective or well-intentioned reasons. Examples of practices which may be discriminatory include, but are not limited to, the following:*

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*requiring billable hours that necessitate a long work week, thereby effectively excluding those who have child-care responsibilities and adversely impacting such persons on the basis of family status or sex.*

B.  
ADMINISTRATION

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B.1. MATTERS FOR 1993-1994

B.1.1. The Women in the Legal Profession Committee reviewed a preliminary list of matters to be placed on the agenda for the next Committee year:

1. Review of the Final Report of the Requalification Committee;
2. Review of Rule 20 (Sexual Harassment) for the Special Committee to Review the Rules of Professional Conduct;
3. Review of the Recommendations of the CBA Wilson Task Force on Gender Equality to be released in August;
4. A further review of the *Transitions Report* to measure the extent to which its recommendations are being implemented;
5. Continuing work with a Co-ordinating Committee made up of representatives of groups and individuals interested in gender issues;
6. Review of a report on the Sexual Harassment Questionnaire and action arising out of that report;
7. Formulation of an information kit for small law firms regarding sexual harassment;
8. Participation on the Subcommittee formulating guidelines for articling interviews.

C.  
INFORMATION

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C.1.           SEXUAL HARASSMENT QUESTIONNAIRE

- C.1.1.        In January 1992, Convocation adopted *A Recommended Personnel Policy Regarding Employment-Related Sexual Harassment*. The policy was distributed to all law firms in Ontario in February, 1992. The Law Society has continued to receive requests for the policy from members of the profession. In its November report to Convocation, the Committee outlined plans for a review of the policy by circulating a questionnaire to law firms in Ontario to measure the policy's success.
- C.1.2.        During the week of April 19-23, 1993, a questionnaire prepared by this Committee was distributed to approximately 2300 law firms in Ontario. Approximately 240 questionnaires have been received, and the results are currently being analyzed by the staff. The Committee received a preliminary report from the staff. A full report concerning the questionnaire will be prepared for the Committee's September meeting.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June 1993

"S. Elliott"  
Chair

It was moved by Susan Elliott, seconded by Fran Kiteley that recognizing Draft Rule 28 is for circulation and comment only that it be amended by re-inserting an additional paragraph (h) under Commentary 8 as set out in the Report of Women in the Legal Profession as follows:

"requiring billable hours or workload expectations that necessitate a long work week, which effectively excludes those who have child-care responsibilities and adversely impacts such persons on the basis of family status or sex.

Carried

THE REPORT AS AMENDED WAS ADOPTED

ADMISSIONS COMMITTEE

Meeting of June 10, 1993

Mr. Brennan presented Item A.-A.1 re: Three Year Rule for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of June, 1993 at 9.30 a.m., the following members being present: Ms. Mohideen (Chair) and Messrs. Brennan, Goudge.

Also present: M. Angevine, A. Treleaven, P. Gyulay and C. Shaw

A.  
POLICY

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- A.1.        THREE YEAR RULE - REQUIREMENTS FOR TRANSFER FROM COMMON LAW PROVINCES
- A.1.1.      The following item was included in the May 1993 report but was not dealt with due to concerns expressed regarding the wording in item #3 of the proposed requirements for transfer:
- A.1.2.      "At its January, 1993 meeting your Committee had before it for consideration the decision of the Quebec Superior Court in Richards v. Barreau du Quebec. The issue in this case was whether the requirement of three years practice in another Canadian jurisdiction in order to be eligible to transfer to Quebec is unconstitutional.
- A.1.3.      Section 4 (1)(a) of Regulation 708 provides that an applicant may be called to the Bar and admitted as a solicitor who has been engaged in the active practice of law in one or more common law provinces or territories of Canada for a period or periods totalling at least three years within the five-year period immediately preceding the application.
- A.1.4.      The Society retained Counsel to provide an opinion as to the validity of the requirement of three years of active practice to be eligible to transfer to Ontario from another Canadian jurisdiction in light of the Richards decision. The opinion was before the Committee at its February 1993 meeting for consideration.
- A.1.5.      The opinion provided that, in essence, the Society can require transfer applicants to comply with standards for admission which are equivalent to those imposed upon students proceeding through the Bar Admission Course.
- A.1.6.      Your Committee also considered the following: 1) transfer requirements of the other common law provinces; 2) the nature of their pre-call training; and 3) the draft Protocol prepared by the Federation of Law Societies Committee on Interjurisdictional Practice.
- A.1.7.      The Committee discussed the matter at both the March and April meetings and requested that a draft proposal be prepared for the May meeting which distilled the views articulated during the various discussions of the issues.

A.1.8. In considering what criteria transfer applicants should be required to meet, your Committee was mindful of the fact that Ontario at present has, if not the most, at least one of the most onerous pre-call training programmes in Canada.

A.1.9. Your Committee concluded that one year of post-call practice experience in another Canadian common law jurisdiction would, in most cases, put transfer applicants on an equivalent basis with individuals who had completed the pre-call training in Ontario.

A.1.10. Your Committee recommends that the transfer requirements be revised as follows:

Applicants for transfer to practice in Ontario from another common law jurisdiction in Canada must establish:

1. good character and professional standing;
2. an approved LL.B. degree or a Certificate of Qualification issued by the Joint Committee on Accreditation;
3. one year in the last three years engaged in the active practice of law or professional training equivalent to that provided in the Bar Admission Course;
4. successful completion of examinations testing knowledge of Ontario statutes and procedure.

A.1.11. Your Committee recognizes that its recommendation, if adopted by Convocation, will make it more onerous than is now the case for foreign-trained lawyers who are called in Alberta to transfer to Ontario. (Alberta is the only province which does not use the Joint Committee to assess its foreign trained applicants.) At present, such applicants are not required to obtain a Certificate of Qualification from the Joint Committee on Accreditation provided they can establish the requisite three years of active practice. Under the new proposal such applicants will be required to submit to assessment by the Joint Committee regardless of their practice experience.

A.1.12. Your Committee was of the view that this approach is consistent with the direction proposed by the Federation's Committee on Interjurisdictional Practice and as well, will ensure that all foreign trained lawyers applying for call to the Bar in Ontario will be held to the same standard."

A.1.13. At the June meeting, your Committee reviewed the third requirement and recommends that the following revision to the wording of paragraph #3 be adopted:

3. one year in the last three years engaged in the active practice of law in a common law jurisdiction of Canada

Note: Motion, see page 164

A.2. CANADIAN CITIZENSHIP & PERMANENT RESIDENCY REQUIREMENTS

- A.2.1. In May 1993, Convocation requested that the Admissions Committee revisit the requirement of Canadian Citizenship or Permanent Residency as a prerequisite to being called to the Ontario Bar and consider possible amendments particularly in light of the opinions received by the Society regarding the constitutionality of such requirements.
- A.2.2. Your Committee has struck a sub-committee composed of Mr. Goudge and Ms. Angevine to review the material and report back to the Committee.

B.  
ADMINISTRATION

B.1. REINSTATEMENT AFTER SUSPENSION - PETITIONS EXAMS WAIVED

- B.1.2. Riemer Boomgaardt was called to the Bar of Ontario on April 19, 1978. He was suspended for non-payment of the annual fee on February 26, 1988. Mr. Boomgaardt now seeks to be reinstated without being required to sit requalification examinations. At the time that he contacted the Law Society the period of his suspension exceeded the five years by just over 2 months.
- B.1.3. In his affidavit dated the 3rd of June, 1993, Mr. Boomgaardt states that at the time of his suspension he was working as Legal Counsellor at the Canadian Embassy in Washington, D.C.
- B.1.4. In August 1988 he returned to Ottawa to work for the Department of External Affairs as Head of the Treaty Section, Legal Advisory Division.
- B.1.5. Mr. Boomgaardt states that for the last year he has been Deputy Director of the Economic and Trade Law Division, Department of External Affairs, and continues in that position with no plans to change employment.
- B.1.6. Mr. Boomgaardt has maintained his filings and has now paid all arrears of fees. He requests that he be reinstated without being required to sit the requalification examinations on the basis of his continued legal work with the Government of Canada.
- B.1.7. Mr. Boomgaardt's affidavit was before the Committee for consideration.

Your Committee recommends that the applicant be reinstated conditional upon his signing a letter of undertaking that he will not return to private practice without first obtaining the Society's permission and, in the Society's discretion, completing the Society's requirements for requalification at that time.

B.1.8. Mark Diamond was called to the Ontario Bar on the 18th of April, 1985. He was suspended for non-payment of the annual fee on the 27th of February, 1987. Mr. Diamond now seeks to be reinstated without being required to sit the requalification examinations.

B.1.9. In his affidavit dated the 10th May 1993, Mr. Diamond states that since May 1st, 1987 he has been employed with Wormark Development Corporation as Partner, Managing Director and shareholder, and has not practised law in any capacity during that time. The applicant also states "I have worked full time since this period as a Developer and Builder and intend to do so in the future as opposed to practising law"

B.1.10. Mr. Diamond asks to be reinstated without examination. In his petition, the applicant undertakes not to return to private practice without notifying the Law Society of Upper Canada and fulfilling the Society's terms respecting requalification at that time.

B.1.11. The applicant has paid the arrears of fees and filed the necessary forms.

B.1.12. Mr. Diamond's affidavit was before the Committee for consideration.

Your Committee recommends that the applicant be reinstated conditional upon his signing a letter of undertaking that he will not return to private practice without first obtaining the Society's permission and, in the Society's discretion, completing the Society's requirements for requalification at that time.

B.1.13. Gordon Alan Fulton was called to the Bar on the 14th day of April, 1978. He was suspended for non-payment of the annual fee on the 24th of February, 1984.

B.1.14. Mr. Fulton was called to the Bar of the Province of British Columbia on the 10th day of September, 1981 and has practised in that province from that date to the present.

B.1.15. Mr. Fulton has no current intention of engaging in active practice in Ontario. The applicant seeks reinstatement and requests an exemption from the requalification examinations.

B.1.16. Mr. Fulton's application was before the Committee for consideration.

Your Committee recommends that Mr. Fulton be reinstated without examination upon making the necessary arrangement with the Director of Finance regarding the payment of arrears.

B.2. DIRECT TRANSFER - COMMON LAW - SECTION 4(1)

B.2.1. The following candidates have met all the requirements to transfer under section 4(1) of Regulation 708 made under the Law Society Act:

Calvin Anthony Becker  
Perry Michael Shawana

Approved

B.2.2. DIRECT TRANSFER - COMMON LAW - SECTION 4(1) & 3(1) - SPECIAL PETITIONS

B.2.3. Mary Alison Crowe (B.A. 1979 from Carleton University and LL.B. 1983 from Dalhousie University) was called to the Bar of the Province of Nova Scotia on the 27th day of July, 1984 and practised in that province from the 15th August 1984 to the 31st January 1989. The applicant was then called to the Bar of the Northwest Territories on the 3rd day of February, 1989.

B.2.4. From February 5th, 1989 to the present Ms. Crowe has served in a legal capacity with the Federal Department of Justice.

B.2.5. Ms. Crowe presents a Certificate of Good Standing and seeks to proceed under sections 4(1) and 3(1).

B.2.6. In her affidavit dated the 28th May, 1993, Ms. Crowe also requests that while completing the transfer requirements she be admitted to membership in the Society and called to the Bar and admitted as a solicitor for the purpose of acting as a Crown attorney, pursuant to sec. 6(1) (b) of Regulation 708 made under the Law Society Act. She states that permission is sought for appearance on matters within both provincial and federal jurisdictions. The specific time period sought is the time granted to fulfill the requirements for admission by transfer, 25th June, 1993 to 25th December 1994 (18 mos.), or such other period as Convocation deems reasonable in the circumstances.

B.2.7. Ms. Crowe's petition was before the Committee for information.

Approved

B.2.8. Michelle Patricia Mann (B.A. 1985 from the University of Saskatchewan and LL.B. 1988 from the University of Manitoba) was called to the Bar of the Province of Manitoba on the 29th day of June, 1989 and practised in that province from the 1st October 1989 to the 31st January 1992 (2 yrs. and 4 mos.).

B.2.9. Ms. Mann originally pursued transfer through Legal Education Committee. It was determined by the Legal Education Committee that Ms. Mann would be required to complete Phases I and III, as well as a 6 month term of articles. Ms. Mann completed Phase I in the summer of 1992. Ms. Mann states that she decided to article for a 12 month period instead of 6 months due to confusion between herself and the Society as to how and when the 6 month articling period was to be served. The petitioner has now completed 10 months of articling with the Department of Justice, Canada.

B.2.10. Ms. Mann has recently accepted the position of legal counsel with the Department of Justice in the Employment & Immigration Legal Service Unit. She is not able to obtain a leave of absence to attend Phase III. The petitioner asks that she now be permitted to proceed under sec. 4(1) in light of the 2 years and 4 months practice experience gained in Manitoba as well as the 10 months work she has performed, serving in a legal capacity, with the Government of Canada which she petitions meets the provision under sec. 3(1).

B.2.11. If permitted to proceed, Ms. Mann intends to sit the transfer examinations in September this year.

- B.2.12. Ms. Mann's affidavit was before the Committee for consideration.
- Your Committee recommends that Ms. Mann's application be denied. Her 10 months of work with the Federal Government cannot be taken as the active practice of law for the purpose of meeting the three year requirement as she was working to fulfill the articling requirement.
- B.2.13. Lawrence Wilde (LL.B. 1982 from the University of Alberta) was called to the Bar of the Province of Alberta on June 27, 1983. He practised in that province with the firm of Lucas, Edwards & Bishop from June 1983 to March 21, 1991.
- B.2.14. Mr. Wilde commenced work with the firm of Mitsui, Uasuda, Wani & Maeda in Tokyo on April 1, 1991 and has practised with that firm until the present time.
- B.2.15. In April 1993 Mr. Wilde contacted the Admissions Department of the Law Society, in writing, regarding the requirements for transfer to Ontario. Upon receipt of those materials he became aware of the requirement of three years of active practice in a common law province of Canada within the immediately preceding five year period. Mr. Wilde's practice experience was 2 yrs. and 10 1/2 months within the last 5 years at the time of his enquiry.
- B.2.16. Mr. Wilde immediately wrote to the Deputy Secretary setting out his situation and stating his intention to apply for admission and to sit the transfer examinations in September 1993 or January 1994 if permitted to do so.
- B.2.17. Mr. Wilde presents a Certificate of Good Standing and requests permission to proceed under section 4(1) in light of the 7 years and 9 mos. practice experience gained in Alberta as well as being short the 3 year requirement by only 6 weeks at the time of his enquiry.
- B.2.18. The Petitioner's affidavit of May 12, 1993 was before the Committee for consideration.

Approved

- B.2.19. DIRECT TRANSFER - COMMON LAW - SECTION 4(1) - SPECIAL PETITION
- B.2.20. Brian George Galbraith (B.A. 1986 and LL.B. 1989 both from Queen's University) was called to the Bar of the Province of Alberta on the 11th day of July, 1990 and has practised in that province from the 11th July 1990 to the present. Mr. Galbraith presents a Certificate of Fitness and seeks to proceed under section 4(1).
- B.2.21. Mr. Galbraith will have the necessary three years of practice on the 11th July 1993. He seeks approval to proceed in advance of having the 3 years in light of the fact that the Admissions Committee will not meet again until September when it would be too late for him to apply for the September 1993 transfer examinations.
- B.2.22. The applicant will continue to practise in Alberta until the 31st July, 1993 to gain an excess of 3 years practice experience.
- Your Committee recommends that Mr. Galbraith's request be approved on condition that he undertake to complete the 3 years in practice.

- B.2.23. Kevin Terrance Williams (B.Comm. 1985 and LL.B. 1989 both from the University of Manitoba) was called to the Bar of the Province of Manitoba on the 28th day of June, 1990 and has practised in that province from the 28th June 1990 to the present. Mr. Williams presents a Certificate of Fitness and seeks to proceed under section 4(1).
- B.2.24. Mr. Williams will have the necessary three years of practice on June 28th, 1993. He seeks approval to proceed in advance of having the 3 years in light of the fact that the Admissions Committee will not meet again until September when it would be too late for him to apply for the September 1993 transfer examinations.
- B.2.25. The applicant will continue to practise in Manitoba to gain an excess of 3 years practice experience.

Your Committee recommends that Mr. Williams' request be approved on condition that he undertake to complete the 3 years in practice.

B.3. DIRECT TRANSFER - QUEBEC - SECTION 4(2)

- B.3.1. The following candidates have met all the requirements to transfer under section 4(2) of Regulation 708 made under the Law Society Act:

Christopher Atchison  
Michael Reginald Concister  
Gilbert Eugene Forest  
Michael Hamelin

Approved

B.4. APPLICATIONS TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

- B.4.1. Oliver Mark Budde has applied to become licensed as a foreign legal consultant in the Toronto office of Skadden, Arps, Slate, Meagher & Flom.
- B.4.2. Oliver Mark Budde was called to the Bar of the State of New York on the 26th day of April, 1993. From September 1991 to the present Mr. Budde has been continuously employed with the firm Skadden, Arps.
- B.4.3. As Mr. Budde has engaged in the practice of law in his home jurisdiction for less than three of the five preceding years, he applies for status as a foreign legal consultant pursuant to the paragraph of the policy which provides that applicants who have been actively engaged in the practice of law in their home jurisdiction for less than three years may be licensed provided they are under the supervision of a foreign legal consultant and the supervisory arrangement has been approved by the Committee.
- B.4.4. Included in the materials from Skadden, Arps was a letter from Milton G. Strom of that firm who states that Mr. Budde will be under the supervision of Christopher W. Morgan, a registered foreign legal consultant, licensed under section 1(a) of the policy.
- B.4.5. Mr. Budde's application is complete and both he and the firm have filed all necessary undertakings.

Approved

25th June, 1993

- B.5.1. Michael Mammon has submitted an application to be licensed as a Foreign Legal Consultant.
- B.5.2. Mr. Mammon was admitted as a Solicitor of the Supreme Court of England and Wales on 16th February 1987. He practised as a solicitor in London from that date until January 1993.
- B.5.3. The applicant has permanent resident status in Canada and maintains a residence in Toronto.
- B.5.4. If licensed as a foreign legal consultant, Mr. Mammon will be practising as a sole practitioner.
- B.5.5. In support of his application Mr. Mammon has submitted a Certificate of Admission to the Roll dated February 16, 1987; a Certificate of Standing from the Law Society of England and Wales dated May 20, 1993; and a Curriculum Vitae. These documents were before the Committee for information.
- B.5.6. Mr. Mammon has also filed the required undertakings which were before the Committee for consideration.
- B.5.7. Mr. Mammon has been pursuing the necessary insurance coverage in respect of claims equivalent to that provided by the Law Society of Upper Canada for its own members and is hopeful that he can make arrangements which will satisfy the Society.
- B.5.8. In view of this, and of the fact that the Committee will not be meeting again until September 1993, Mr. Mammon requests that, if his application is otherwise in order, he be granted a licence conditional upon his arranging the necessary insurance. He confirms that he will not commence practising until such time as all conditions have been fulfilled.

Your Committee recommends that Mr. Mammon's application be approved subject to his providing satisfactory evidence of the requisite insurance coverage.

B.6. EXAMINATION RESULTS - TRANSFER EXAMINATIONS

- B.6.1. In May this year three transfer candidates sat the written portion of the transfer examinations.

The following candidates passed:

Ronald Shacter  
Theresa Siok

One candidate failed and now will be scheduled for the oral portion of the examinations.

Noted

B.7. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.7.1. BAR ADMISSION COURSE

- B.7.2. The following candidate having successfully completed the 30th Bar Admission Course and having deferred her call to the Bar now has filed the necessary documents and paid the required fee and applies to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on June 25th, 1993:

Debra Lynne Sattler

Approved

- B.7.3. The following candidates having successfully completed the 34th Bar Admission Course and having deferred their call to the Bar now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on June 25th, 1993:

Laura Ann Armstrong  
Stewart Robert Shackleton

Approved

- B.7.4. The following candidates having successfully completed the 34th Bar Admission Course now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on June 25th, 1993:

Frank Catalano  
Keith Louis Gordon  
Alan Douglas Kurtz  
Peter van Overbeek  
Xiangmin Xu

Approved

- B.7.5. The following candidates expect to complete the 34th Bar Admission Course by mid June, 1993, and wish to be called to the Bar and granted a Certificate of Fitness, at Regular Convocation on June 25th, 1993:

Chee Yen Suzane Chan  
James Bertram Davidson  
Catherine Mary Poyen

Your Committee recommends that they be approved conditional upon the candidates completing the articling requirement, filing the necessary documents and paying the required fee prior to June 25th, 1993.

B.7.6. TRANSFER FROM QUEBEC - SECTION 4(2)

B.7.7. The following candidate having completed successfully the transfer examinations, filed the necessary documents and paid the required fee now applies for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, June 25th, 1993:

Ronald Shacter	Province of Quebec
Theresa Siok	Province of Quebec

Approved

B.7.8. FULL-TIME MEMBERS OF FACULTIES OF APPROVED LAW SCHOOLS

B.7.9. The following members of approved law faculties ask to be called to the Bar and admitted as solicitors without examination under s.5 Reg. 708. They have filed the necessary documents and complied with the requirements of the Society.

Requests call June 25th, 1993:

Diane Florence Labelle	Faculty of Law, University of Ottawa.
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Fee: \$200.00

Requests call at later date:

Ellen Barbara Zweibel	Faculty of Law, University of Ottawa.
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Fee: \$200.00

Approved

B.8. CRIMINAL CONVICTION - GOOD CHARACTER

B.8.1. A law student has written to the Law Society of Upper Canada to enquire whether her criminal record would prevent her being admitted to practice in Ontario.

B.8.2. In January 1990 she was convicted on 14 counts of Fraud under \$1,000; 7 counts of Accommodation Fraud; 4 counts of Transportation Fraud and Fail to Appear. The applicant received a suspended sentence and was placed on probation for 2 years on each count.

B.8.3. Seven of the incidents involved issuing a personal cheque as payment which were returned N.S.F. and finally as 'Account Closed'. Eighteen of the offences involved verbally using her mother's Visa Card number without her authorization or knowledge.

B.8.4. The Deputy Secretary received 6 letters of reference, including one from the applicant's mother, all attesting to her present good character.

B.8.5. The Deputy Secretary also received a letter dated February 10, 1993 from Mary Ellen Cullen, the Assistant Crown Attorney on the matter. Her letter outlines the nature of each offence.

- B.8.6. The student's petition was before the Admissions Committee at its meeting on March 11, 1993. At that time the Committee requested that she provide further information on the circumstances surrounding the N.S.F. cheques. The Committee also requested information from the individuals involved in the case.
- B.8.7. The following letters were received by the Deputy Secretary and put before the Committee for consideration in addition to the material originally before it: a letter dated April 5, 1993 from the student; a letter dated April 26, 1993 from V. Owen Ramsay, Probation and Parole Officer; and a letter dated April 7, 1993 from the Honourable Mr. Justice Langdon.

After consideration of the information before it, your Committee recommends that a hearing under Section 27 of the Law Society Act is not necessary.

- B.9. REQUEST FOR EXTENSION OF 18 MONTH TIME PERIOD FOR COMPLETION OF TRANSFER EXAMINATIONS
- B.9.1. Firoz R. Dossa was approved to proceed under sec. 4(1) in February 1992. The 18 month time period granted Mr. Dossa for completion of the transfer examinations will expire at the end of August 1993.
- B.9.2. Mr. Dossa continues to practise in British Columbia and for work related reasons has been unable to attempt the examinations before this time. The candidate had planned his schedule to sit the July 1993 Statutes and Procedure examination. The Statutes and Procedure examination has been replaced by the new transfer examinations which are offered in the months of January, May and September. There will be no examinations offered in July this year. Mr. Dossa request a one month extension of the time period for completion of the examinations to allow him to take the September examinations.

Approved

C.  
INFORMATION

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- C.1. PERMANENT RESIDENCY STATUS APPROVED
- C.1.1. In November, 1992, the Admissions Committee recommended to Convocation that John Raymond Mann III who had successfully completed the 34th Bar Admission Course be permitted to be called to the Ontario Bar upon signing a letter of undertaking to continue to pursue his application for permanent residency subject to various terms and conditions.
- C.1.2. The student was subsequently called to the Bar in February 1993. Mr. Mann has since sent a letter dated the 22nd April, 1993 stating that his application for permanent residency in Canada has been approved and enclosed a copy of his landed immigrant documents for our records.

Noted



C.5. CHANGES OF NAME

C.5.1. Members

From

To

Janice Irene Anise Hietapakka

Janice Irene Anise Docherty  
(Married Name)

Annette Mary Leona Lemelin

Annette Mary Leona Poulin  
(Change of Name Certificate)

Daniele Laumann

Daniele Laumann Hart  
(Change of Name Certificate)

Marlene Rodrigues

Marlene Rodrigues Roza  
(Change of Name Certificate)

Alison Christina Maud Stevenson

Alison Christina Maud  
Stevenson-Lee  
(Change of Name Certificate)

Noted

C.6. ROLLS AND RECORDS

Deaths

The following members have died:

Harry Louis Mendelson  
Toronto

Called October 18, 1928  
Died June 20, 1992

Robert Thompson L. Innes  
Brantford

Called September 18, 1930  
Died November 25, 1992

Kenneth Watt Kernaghan  
Toronto

Called June 20, 1940  
Died March 10, 1993

Clifford James Stiles  
Etobicoke

Called June 28, 1956  
Died March 19, 1993

Patrick Daniel Lawlor  
Toronto

Called September 15, 1949  
Died March 28, 1993

Francis Charles Askwith  
Ottawa

Called March 17, 1967  
Died March 28, 1993

Jack Douglas Bowerman  
Alliston

Called October 18, 1934  
Died April 21, 1993

Bruce Victor Johnston  
Straffordville

Called June 26, 1958  
Died May 5, 1993

25th June, 1993

Brian Lawrence Cappel  
Etobicoke

Called March 21, 1975  
Died May 10, 1993

Noted

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

R. Carter"  
Chair

It was moved by Mr. Cass, seconded by Mr. McKinnon that Item A.-A.1 re:  
Third Year Rule be referred back to Committee.

Carried

THE REPORT AS AMENDED WAS ADOPTED

Meeting of June 22, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Tuesday, the 22nd of June, 1993 the following members  
being present: Ms. Mohideen (Chair) and Messrs. Brennan, Goudge.

B.  
ADMINISTRATION

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

B.1.1. BAR ADMISSION COURSE

B.1.2. The following candidate having successfully completed the 34th Bar  
Admission Course and having deferred her call to the Bar now has  
filed the necessary documents and paid the required fee and applies  
to be called to the Bar and to be granted a Certificate of Fitness  
at Regular Convocation on June 25th, 1993:

Rosemin Keshvani

Approved

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"R. Carter"  
Chair

THE REPORT WAS ADOPTED

LEGISLATION AND RULES COMMITTEE

Meeting of June 10, 1993

Mr. Cullity sought directions from Convocation in respect of Item B.-B.1. re: Discipline Management Procedures and Item B.-B.2. re: Benchers Elections.

Item B.-B.1.

It was moved by Mr. Brennan, seconded by Mr. McKinnon that the Legislation and Rules Committee, in consultation with the Discipline Committee, draft the necessary amendments.

Carried

Item B.-B.2.

It was moved by Mr. Brennan, seconded by Ms. Weaver that the Legislation and Rules Committee draft the amendments necessary to implement the scheme of regional election.

Carried

THE REPORT WAS ADOPTED

PROFESSIONAL CONDUCT COMMITTEE

Meeting of June 10, 1993

Mr. Scott presented Item A.-1. re: Consulting Company - Foreign Legal Consultants for Convocation's approval.

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

Meeting of June 10, 1993

Mr. McKinnon presented Item A.-A.3. re: Family Law Checklist for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of June, at 11:30 a.m., the following members being present: R. Murray (Vice Chair), M. Weaver (Vice Chair), P. Furlong, N. Graham.

Also Present: N. Amico, J. Adamowicz, M. Devlin, S. McCaffrey, P. Rogerson.

A.  
POLICY

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A.1. REVIEW OF THE RULES OF PROFESSIONAL CONDUCT - RULE 2

A.1.1. In response to an invitation from Marc Somerville, Chair of the Special Committee to Review the Rules of Professional Conduct, the Committee as a whole was struck as a Working Group to review the adequacy of Rule 2 (Competence and Quality of Service). The Working Group met on March 31, 1993, on Committee day in April, 1993, and again on Committee day in May, 1993.

A.1.2. The Working Group has adopted a model similar in format to the Draft Code of the Law Society of Alberta, while recognizing that this format may be subject to change by the Special Committee.

A.1.3. A draft of revised Rule 2 was considered by the Committee at its meeting in May, and further amendments made. These revisions have been incorporated into the draft and were sent to Committee members. A copy of this draft has been provided to the Special Committee as well.

A.1.4. The Special Committee met on June 9, 1993 and will be providing its comments on Rule 2 to the Working Group. Further discussion of this rule is therefore deferred until the response of the Special Committee is received.

A.2. REVIEW OF THE RULES OF PROFESSIONAL CONDUCT - RULE 3

A.2.1. The Committee has also been invited by the Chair of the Special Committee to Review the Rules of Professional Conduct to undertake the review of Rule 3 (Advising Clients).

A.2.2. A special meeting of the Working Group will be called during the summer months to review Rule 3.

A.3. FAMILY LAW CHECKLIST

A.3.1. A sub-committee was struck in the spring of 1989, to prepare a checklist for use in a Family Law practice. The sub-committee is chaired by Frances Kiteley, and consists of Richard Greene, Evelyn McGivney, Gordon Morton, Elisabeth Sachs and Gertrude Spiegel. After extensive consultation with the profession, several meetings of the sub-committee, and several revisions, a draft checklist was prepared and reviewed by the Professional Standards Committee. The checklist was also provided to the County and District Law Association Presidents for their review and comment.

A.3.2. The Law Association Presidents raised concerns as to the impact of this, and other, checklists upon the profession, in that such checklists may be taken to establish a minimum standard of care against which members of the profession will be judged in assessing negligence and liability for same. The Law Association Presidents therefore voted for the rejection of the checklist.

- A.3.3. The Committee considered the objections of the Law Association Presidents, and reviewed the checklist prepared for use in a residential real estate practice, as well as that prepared by the Family Law sub-committee. The Committee notes that, in accordance with its mandate, it has devised a series of checklists to assist the membership in delivering capable legal services to clients, this being the third in the series to be published. The format of the Family Law Checklist follows that used for the Criminal Defence and Real Estate Checklists. The Committee notes further that it has had funds in its budget since 1991 for the publication of the Family Law checklist, which funds have been carried forward annually for this purpose since that time. There are thus no adverse cost implications in proceeding with the checklist at this time. A copy of the checklist is attached as appendix A.
- A.3.4. The Committee therefore recommends that the Family Law checklist be approved for publication and distribution to the profession.

Note: Motion, see page 170

B.  
ADMINISTRATION

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B.1. PRACTICE REVIEW PROGRAMME - REINSTATEMENT ON LAWYER REFERRAL SERVICE

- B.1.1. The Lawyer Referral Service was established as a pilot project in 1970, the primary function of which appears to be to facilitate access by the public to competent legal counsel. When a lawyer is authorized for participation in the Practice Review Programme, the Communications Department removes the lawyer's name from the Service's roster. The removal is based upon the following rationale:
- a) the purpose in notifying the Lawyer Referral Service is to protect the public and, to a lesser extent, the Law Society, from the danger of creating a solicitor/client relationship involving a lawyer whom the Society, based on a significant body of data, believes may have a competency problem;
  - b) the Referral Service should be made aware of the names of all lawyers authorized, regardless of whether they agree to participate in the Programme, so that the Service can make an informed decision on the suitability of the lawyer to continue as a participant in the Service.
- B.1.2. Where it considers it appropriate to do so, the Committee can recommend to the Lawyer Referral Service that a lawyer's name be restored to the Referral Service roster even though that lawyer is participating in the Practice Review Programme.
- B.1.3. Upon the successful completion of the Practice Review Programme, the Standards Department notifies the Lawyer Referral Service, and the lawyer's name is ordinarily restored to the Service's roster.

B.1.4. Where a lawyer was authorized to participate in the Programme, but refused, and the lawyer's Review Programme file is accordingly closed by the Committee, Professional Standards Department staff continue for the following year to monitor the member's profile for complaints, errors and omissions claims, audits and other information. If there are no additions to the profile, the lawyer's name is restored to the Lawyer Referral Service Roster at the end of that one year period. If the Law Society has continued to receive complaints, claims and other information about the lawyer, the lawyer's name will not be restored to the Roster unless the Committee decides it is appropriate to do so.

B.1.5. Reinstatement Requests

B.1.6. Two lawyers presently participating in the Programme requested reinstatement on the Lawyer Referral Service roster because of the potential financial impact of removal from same. Although the Committee recognizes that financial hardship may be an issue to be taken into consideration, that issue should be given less weight than the public interest. In one instance, the lawyer has received 28 complaints since 1980, 3 of which were received in 1992 and 4 in 1993 to date, together with 4 potential E&O claims. In the second instance, the lawyer, who was called to the bar in 1979, has received 11 complaints and 3 potential E&O claims. Seven of the complaints were received in 1992, and 3 in 1993 to date. The Committee determined that no exception to existing policy should be made in these cases.

B.1.7. One lawyer who has not yet decided whether to participate in the Programme requested that his name be restored to the Lawyer Referral Service roster. That lawyer was called to the Bar in 1972, and has received a total of 5 complaints and 2 E&O claims, both of which are assessed as "doubtful". None of the complaints matters are particularly serious, and the member has been responsive to staff suggestions regarding the causes of same. Given the few complaints and claims received, and the lawyer's responsiveness to staff suggestions, the Committee has authorized the restoration of the lawyer's name to the Lawyer Referral Service roster.

B.1.8. A fourth lawyer, who refused to participate in the Programme, sought restoration to the Lawyer Referral Service roster after a year had elapsed since his Review Programme file was closed. Although he has received 3 complaints in the past year, one of those complaints was an unfounded third party complaint, the second was a fees dispute, and the third was outside Law Society jurisdiction, concerning the lawyer in his personal capacity. The Complaints Department advised that the lawyer acted appropriately in all three matters. The Committee therefore authorized the restoration of this lawyer's name to the Lawyer Referral Service roster.

B.2. PRACTICE REVIEW PROGRAMME - FILE CLOSURES

B.2.1. One Practice Review file was closed by the Committee due to the member's unwillingness to participate in the Programme. The file is being referred to Senior Counsel, Discipline pursuant to Committee policy.

- B.2.2. Two Practice Review files were closed by the Committee on the basis of the members' successful completion of the Practice Review Programme. The first member was authorized for participation in May 1990 based on an order from Discipline. The Committee was satisfied that the solicitor has implemented systems and recommendations made to him in the course of the programme which may assist him in the avoidance of future problems. No complaints or claims have been received since March of 1992. The second member was authorized for participation in March 1992 based on a referral from the Audit Department. A remedial program formulated for the solicitor was found to be beneficial in the administration of his practice. The solicitor has received no complaints since the referral and no Errors and Omissions claims since March of 1992.
- B.2.3. A fourth Practice Review file was closed on the basis that the member's involvement in the Programme is no longer appropriate. The member was authorized for participation in April 1992 based on a referral from the Complaints department. In May 1992 a review of the practice was done and several recommendations made. Shortly thereafter, the member accepted a full-time teaching position at a community college and is no longer practising law.
- B.2.4. Two Practice Review files were closed on the basis that participation in the Programme would be unnecessary. In the first instance, authorization was granted for staff to meet with the lawyer and prepare a report regarding the practice, rather than immediately instituting a practice review. Based on the information contained in the report, the Committee was satisfied that the member's participation in the Programme was not required. The sixth file involved a member who was authorized to participate in May 1993. The member's profile suggested possible practice concerns, but further investigation indicated that the member practises competently and would not be an appropriate participant in the Programme. The Committee was satisfied that the file be closed on this basis.

C.  
INFORMATION

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- C.1. PRACTICE ADVISORY SERVICE - STATUS REPORT
- C.1.1. The Practice Advisory Service received 600 calls during April, 233 of which were from sole practitioners, 281 from other members of the profession and 86 from support staff. 372 of the calls came from Toronto and 228 from outside Toronto. 118 calls involved different areas of law, 164 calls required advice on the Rules of Professional Conduct and 37 dealt with the Law Society Act and Regulations. The remainder of the calls covered a wide variety of topics. Many of the calls indicate great stress on members, due chiefly to financial hardships.
- C.1.2. There appears to be an ever increasing number of members establishing their own practices as demonstrated by the monthly attendances at the Start-Up Workshops. Not all are newly called members. At the May Workshop 60% were called in the 1990's; 20% were called in the 1980's; 10% were called in the 1970's, and the other 10% were unascertainable. Start-Up Workshops will be run in Ottawa during June and July and will continue to be held in Toronto during the summer months.

C.2. PROFESSIONAL STANDARDS - DEPARTMENTAL REPORT

- C.2.1. Interviews are now under way for the new staff lawyer position in the Professional Standards Department. A large number of applicants are anticipated, given the economy and recent experience in other departments.
- C.2.2. The number of open files in the Practice Review Programme has grown from 88 in July 1992 to 121 in May 1993. Approximately 50 reviews took place in fiscal 92/93 compared to an average of 11 per year in the preceding 4 years.
- C.2.3. A review panel was held in May, constituted of Stephen Goudge and Paul Lamek; another panel is scheduled for June, and Colin Campbell, Earl Levy and Dennis O'Connor have agreed to sit as panel members.
- C.2.4. Staff met recently with a representative from the Law Society of Western Australia to address interests of common concern in both jurisdictions.
- C.2.5. The Law Society, in conjunction with the Canadian Society for the Advancement of Legal Technology, presented its annual "Technology for Lawyers" program in May. Topics of interest to the Standards Department ranged from the use of technology in addressing today's economic issues to future trends such as the paperless office.

DATED this 25th day of June, 1993

"C. McKinnon"  
Chair

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

A-Item A.3. - Copy of the Family Law Checklist. (Appendix A, pages 1 - 65)

It was moved by Mr. McKinnon, seconded by Mr. Scott that the Family Law Checklist be adopted.

Carried

THE REPORT WAS ADOPTED

SPECIAL COMMITTEE ON THE BICENTENNIAL

Meeting of June 10, 1993

Mr. Wardlaw presented Item A.-1. re: Bicentennial History Project for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The BICENTENNIAL COMMITTEE begs leave to report:

25th June, 1993

Your Committee met on Thursday, the 10th of June, 1993 at three o'clock in the afternoon, the following members being present: Wardlaw (Chair), Hickey, O'Brien, Pepper and Scace. Also present were Ramsay Derry, Susan Binnie and Stephen Traviss.

A.  
POLICY

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1. BICENTENNIAL HISTORY PROJECT

The Committee met in early April and agreed that its consultant, Ramsay Derry, work on a draft contract with author Christopher Moore. The Committee had a chance to talk to Mr. Moore at some length and was satisfied that he was the suitable candidate to undertake the history. He is published and has as references such notable historians as Professor Ramsay Cook and Professor Peter Oliver.

The Committee reviewed the draft contract with Mr. Derry and made some minor alterations. Mr. Derry had reviewed the contract with Ms. Marian Hebb, whose law practice includes such matters as advising on publishing contracts.

A copy of the draft contract is attached (numbered 1 - 10).

The Committee wishes to have the contract signed once the changes are made. The Committee asks Convocation to authorize the Law Society to enter into the contract with Christopher Moore.

There will be an advisory committee composed of two benchers, two academics and two staff persons that will monitor the progress and be answerable to the Bicentennial Committee. Mr. Moore will start work on the book in September 1993 and deliver a manuscript of 100,000 words on September 15th 1995. The consideration is \$150,000.00. There are related estimated costs of \$58,000.00 to cover research assistance, editorial, design and production co-ordination work.

The money for this project has already been budgeted for.

Note: Motion, see page 172

C.  
INFORMATION

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1. STAMP PROJECT

Mr. Pepper made a presentation respecting the communications he has had with Canada Post during the past six months. He noted that Canada Post has issued a stamp to commemorate the centennial of the Dalhousie Law School in 1983. The Post Office makes its decision on commemorative stamps in the calendar year preceding the event. Mr. Pepper will keep in regular contact with a view to seeing if a positive decision on a stamp could be taken in 1996 for 1997.

2. COIN PROJECT

Dr. Binnie reported that Mr. Jarvis has been in regular touch with the Canadian Mint. It was still too soon for there to be any definite interest by the officialdom at the Mint with respect to the commissioning of a coin to mark the Bicentennial. Mr. Jarvis will keep in contact with the officials at the Mint and will send further material to assist them in making a decision in 1996.

3. OTHER BICENTENNIAL PROJECTS

The Committee will meet again in the Fall to discuss further projects. It will be necessary to cost the projects and to determine what staff resources would have to be allocated to them.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1993

"J. Wardlaw"  
Chair

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

A-Item 1 - Draft contract re: history project.

(Numbered 1 - 10)

It was moved by Mr. Bastedo, seconded by Ms. Elliott that Item A.-1. re: Bicentennial History Project be referred back to Committee to be reconsidered in light of the comments made.

Carried

THE REPORT AS AMENDED WAS ADOPTED

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CONVOCATION ROSE AT 4:00 P.M.

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Confirmed in Convocation this        day of                1993.

Treasurer