

MINUTES OF CONVOCATION

Friday, 26th November, 1993  
9:30 a.m.

PRESENT:

The Treasurer (Paul S.A. Lamek), Arnup, Bastedo, Bellamy, Brennan, Campbell, Carter, R. Cass, Cooper, Copeland, Cullity, Curtis, Epstein, Farquharson, Finkelstein, Goudge, Graham, Hill, Howland, Kiteley, Krishna, Lamont, Lawrence, Lax, Legge, Lerner, Levy, McKinnon, Manes, Mohideen, Moliner, O'Brien, Palmer, Pepper, Peters, Ruby, Scace, Scott, Sealy, Strosberg, Thom, Topp, Wardlaw and Weaver.

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IN PUBLIC

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MOTION - AGENDA - COMMITTEE REPORTS TAKEN AS READ

It was moved by Mr. Lamont, seconded by Mr. Arnup that the Reports listed in paragraph 4 of the Agenda (Reports to be taken as read) including the Admissions Report dated November 25, 1993 and the deletion of Items C.-1. & 1.1. in the Specialist Certification Board Report, be adopted.

Carried

- Admissions (2 Reports)
- Communications
- Equity in Legal Education and Practice
- Finance and Administration
- Heritage
- Insurance
- Investment
- Lawyers Fund for Client Compensation
- Legal Aid
- Legal Education
- Legislation and Rules
- Libraries and Reporting
- October Draft Minutes
- Professional Conduct
- Professional Standards
- Relief and Assistance
- Research and Planning
- Specialist Certification Board (Items C.-1. & 1.1. deleted)
- Unauthorized Practice
- Women in the Legal Profession

CALL TO THE BAR

The following candidates were presented to the Treasurer and Convocation and were called to the Bar by the Treasurer and the degree of Barrister-at-Law was conferred upon each of them.

John Nigel Borel	34th Bar Admission Course
Brian George Galbraith	Special, Transfer, Alberta
Firoz Ramzanali Dossa	Special, Transfer British Columbia
Anne McLernan	Special, Transfer, Quebec
Allan Ludkiewicz	Special, Transfer, Manitoba
Peter John Stanford	Special, Transfer, British Columbia

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DISCIPLINE COMMITTEE

Re: ROSS HAINSWORTH, Edmonton

Ms. Peters, Ms. Bellamy, Messrs. Copeland, Wardlaw, Howland and Thom did not participate.

Mr. Michael Brown appeared on behalf of the Society and the solicitor appeared on his own behalf.

Counsel for the Society sought direction from Convocation regarding the cross-examination of the process servers.

The solicitor confirmed that he would accept service both personally and by registered mail at 9 Verbena Avenue.

Counsel, the solicitor, the reporter and the public withdrew.

It was moved by Mr. Bastedo, seconded by Mr. Cass that the matter be adjourned on the solicitor's undertaking not to practise to the March Special Convocation unless the solicitor wishes to proceed in January 1994. If the solicitor does not undertake not to practise the matter would be adjourned to January and the solicitor will be at liberty to cross-examine whoever he wishes. The solicitor is also to accept service by registered mail at the 9 Verbena Avenue address.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision. The solicitor indicated that service could be effected by way of personal service or registered mail delivered to 9 Verbena Avenue, Toronto. The solicitor was also advised that if he had additional material for Convocation that it be received by January 15th, 1994.

Counsel and solicitor retired.

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TREASURER'S REMARKS

Invitations were extended to Samual Grange, Gordon Robertson and Marilyn Pilkington to attend the February Call to the Bar ceremonies and receive honorary degrees.

The Treasurer outlined the agenda for the Special Convocation scheduled for December 11th, 1993.

MOTION - RE: HIS HONOUR JUDGE W. P. HRYCIUK

It was moved by Mr. Strosberg, seconded by Mr. Finkelstein that the Treasurer be given the authority to appoint a special committee if an application for reinstatement be made by Judge Hryciuk.

Carried

Messrs. Cooper and O'Brien did not participate.

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MOTION - COMMITTEE APPOINTMENTS

It was moved by Ms. Graham, seconded by Mr. Finkelstein THAT Julaine Palmer be added as a member of the Insurance Committee and

THAT Robert Topp and James Wardlaw be added as members of the Legislation and Rules Committee.

Carried

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COMMITTEE REPORTS

ADMISSIONS COMMITTEE

Meetings of November 11 and 25, 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 Thursday, the 11th of November, 1993 at 9.30 a.m. the following members being present: Mr. Lamont (Chair), Ms. Moliner, and Messrs. Goudge and Ruby.

Also present: M. Angevine, C. Shaw, P. Gyulay.

A.  
POLICY

There are no items to report at this time.

B.  
ADMINISTRATION

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B.1. REINSTATEMENT AFTER SUSPENSION - PETITION FOR WAIVER OF EXAMS

B.1.1. E. Sheridan Barker was called to the Bar of Ontario on April 14, 1980. She was suspended for non-payment of the annual fee on February 27, 1986. Ms. Barker now seeks to be reinstated without being required to sit the requalification examinations.

B.1.2. Ms. Barker's letter of application and curriculum vitae were before the Committee for consideration.

Your Committee recommends that the applicant be reinstated conditional on her signing a letter of undertaking that she will not engage in the practice of Ontario law without first obtaining the Society's permission and, in the Society's discretion, completing the Society's requirements for requalification at that time.

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:

Martin Manley Chernos  
Brian Alexander Dingwall  
Wayne Stanley Shalagan  
Aida Mary Van Wees

Approved

B.3. CALL TO THE BAR AND CERTIFICATES OF FITNESS

B.3.1. 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 November 26, 1993:

John Nigel Borel  
David Steven Umansky

Approved

B.4. CRIMINAL CONVICTION - GOOD CHARACTER

B.4.1. A student seeking to enter law school has written to the Law Society of Upper Canada to enquire whether his criminal record would prevent his being admitted to practice in Ontario.

On the basis of the material before it your Committee recommends that the applicant's criminal record should not prevent his being called to the Bar.

C.  
INFORMATION

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C.1. ROLLS AND RECORDS

C.1.1. (a) Deaths

The following members have died:

Francis Egan Dunlap Ottawa	Called June 21, 1951 Died September 26, 1993
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Dennis Eugene Kaye Nassau, Bahamas	Called April 10, 1980 Died October 11, 1993
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David Findlay Charlton Cambridge	Called March 17, 1967 Died October 13, 1993
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Noted

C.1.2. Disbarments

The following member has been disbarred and struck off the rolls and his name has been removed from the rolls and records of the Society:

Gregory Peter Linton Vanular Pickering	Called April 9, 1981 Disbarred - Convocation October 21, 1993
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Noted

C.1.3. Membership in Abeyance

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

Hugh Lloyd Fraser Ottawa	Called April 9, 1979 Appointed to Ontario Court of Justice (Provincial Division) April 30, 1993
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Marion Lee Cohen Toronto	Called March 29, 1977 Appointed to Ontario Court of Justice (Provincial Division) August 9, 1993
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Sandra Jean Simpson Ottawa	Called March 21, 1975 Appointed to Federal Court of Justice August 31, 1993
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Noted

C.2. CHANGES OF NAME

C.2.1. (a) Member

From

To

Elizabeth Anne Johnson

Elizabeth Anne Johnson Hersen  
(Marriage Certificate)

Elisabeth Margarete Zehr

Elisabeth Margarete Hoffmann  
(Marriage Certificate)

Angelina Alexander

Angelina Alexander Mason  
(Marriage Certificate)

Moises Mouyal

Moses Muyal  
(Change of Name Certificate)

Noted

C.2.2. (b) Student Member

From

To

Pomila Bhardwaj

Pamila Bhardwaj  
(Name Change Certificate)

Sarah Mary Reilly

Sarah Mary Cohen  
(Marriage Certificate)

Jacqueline Melisse Dais

Jacqueline Melisse Dais-Visca  
(Marriage Certificate)

Noted

C.3. LIFE MEMBERS

C.3.1. Pursuant to Rule 49, the following are eligible to become Life Members of the Society with an effective date of October 21, 1993:

John Henry O'Neill Pepler  
John Joseph Wintermeyer

Toronto  
Kitchener

Noted

C.4. MEMBERSHIP RESTORED

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

	<u>Effective date:</u>
John Cassells	1st June 1992

Noted

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

R. Carter  
Chair

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 25th of November, 1993 at 8:45 a.m., the following members being present: Mr. Carter (Chair), Ms. Mohideen, Ms. Moliner and Messrs. Lamont and Levy.

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

B.  
ADMINISTRATION

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

B.1.1. The following candidate has met all the requirements to transfer under section 4(1) of Regulation 708 made under the Law Society Act:

Victor Steven Savino

Approved

B.1.2. The following candidate has met all the requirements to transfer under sections 4(1) and 3(1) of Regulation 708 made under the Law Society Act:

Loretta Lea Scott

Approved

B.2. DIRECT TRANSFER - QUEBEC - SECTION 4(2) - SPECIAL PETITION -WAIVER OF PART I OF COMMON LAW EXAMINATION

The following candidate has met all the requirements to transfer under section 4(2) of Regulation 708 made under the Law Society Act:

Bernard F. Labarge

Your committee recommends that the applicant be approved to proceed under sec. 4(2). Your committee further recommends that the applicant's request for a waiver of Part I of the common law examination be denied.

B.3. EXAMINATION RESULTS - TRANSFER EXAMINATION

B.3.1. The following candidates have completed successfully the September 1993 transfer examination:

Calvin Anthony Becker  
John Cirillo  
Firoz Ramzanali Dossa  
Brian George Galbraith  
Allan Ludkiewicz  
Anne McLernan  
Peter John Stanford

Noted

B.4. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.4.1. Transfer from another Province - Section 4(1)

B.4.2. The following candidates having completed successfully the transfer examination, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, November 26th, 1993:

Firoz Ramzanali Dossa	Province of British Columbia
Brian George Galbraith	Province of Alberta
Allan Ludkiewicz	Province of Manitoba
Peter John Stanford	Province of British Columbia

Approved

26th November, 1993

B.4.3. Transfer from Quebec - Section 4(2)

B.4.4. The following candidate having completed successfully the transfer examination, filed the necessary documents and paid the required fee now applies for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, November 26th, 1993:

Anne McLernan

Province of Quebec

Approved

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

R. Carter  
Chair

THE REPORTS WERE ADOPTED

COMMUNICATIONS COMMITTEE

Meeting of November 11, 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 11th of November, 1993, the following members being present: Denise Bellamy (Chair), Christopher DuVernet, Fran Kiteley, Allan Lawrence, Hope Sealy and Stuart Thom. Also in attendance: Gemma Zecchini and Christine Wackermann.

C.  
INFORMATION

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1. Communications Policy

Your Committee reviewed a second draft of a proposed Communications policy and made further changes and recommendations. The Committee will discuss the next version at its January meeting.

2. Client Information System

Promotion for the Client Information System is being sent to all members with the November information mail-out.

26th November, 1993

The project was undertaken after an extensive survey of 1,000 Ontario adults and 500 lawyers was conducted in 1992, indicating that a simple information tool was required to help lawyers establish proper communication with their clients.

The Clients Information Systems comprises one main booklet *Lawyers & Clients: A Working Relationship*, and three supporting brochures on Real Estate, Wills and Estates, and Family Law. The brochures contain all the basic information clients need in order to be informed users of legal services.

3. Call Statistics

The Lawyer Referral Service received 13,009 calls this month for a total of 152,820 since the beginning of the year.

Dial-A-Law received 23,593 calls in October, 17% fewer calls than last year for the same period. The total number of calls this year to date is 270,601. A recent long distance (watts) telephone traffic report indicates that Dial-A-Law is experiencing an 86 per cent busy rate indicating that only 14 per cent of long-distance callers are able to access the program.

3. Media Activity

A summary of the media activity for the month of October indicates the following list of popular media issues in order of priority: Discipline, legal education/articling, access to the legal profession by women, lawyers' image, and other miscellaneous topics.

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

D. Bellamy  
Chair

THE REPORT WAS ADOPTED

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of November 11, 1993

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 11th of November 1993, the following persons being present: Stephen Goudge (Chair), Denise Bellamy, Colin McKinnon, Marie Moliner, Nora Richardson, David Scott, Stuart Thom, April Burey, Sharon Ffolkes-Abrahams, Wes Marsden, Marilyn Pilkington, Andrew Ranachan, Donald Crosbie, Mimi Hart and Alexis Singer.

C.  
INFORMATION

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- C.1            Report of the Wilson Task Force on Gender Equality in the Legal Profession
- C.1.1        The Chair briefly reported on the discussion he had with the Chair of the Women in the Legal Profession Committee and the Chair of the Legal Education Committee on the review of this report and staff were asked to prepare a discussion paper on those recommendations assigned to the Equity Committee.
- C.2            Proposed Rule on Non-Discrimination
- C.2.1        The subcommittee consisting of Denise Bellamy and David Scott reported on their review of the letters commenting on proposed Rule 28. The subcommittee's report noted that the approval by Convocation of a new structure for the Rules of Professional Conduct had influenced the manner in which they prepared their report. The report identified key issues that needed further discussion by the Equity in Legal Education and Practice Committee in conjunction with the Women in the Legal Profession Committee and the Professional Conduct Committee. It was clear from the letters that education of the profession concerning the application of the *Human Rights Code* to law firms as employers was very important. The subcommittee stressed the need for reasoned replies to the concerns expressed by members and that these replies be set out for the advice of Convocation. This would involve the consideration of the basic issue of whether or not there should be a Rule 28 (and by implication a Rule 27) in view of the existing provisions of the *Human Rights Code*. If it is determined by Convocation that there should be such a rule, then it will be necessary to determine whether in accordance with the new procedures for the Rules of Professional Conduct any of the material set out in commentaries to proposed Rule 28 should be incorporated into subrules relating to Rule 28.
- C.2.2        While agreeing that the report could acknowledge that the Equity in Legal Education and Practice Committee had endorsed in principle the need for Rule 28, the statement of this issue as one of a series of questions for debate should be put forward without comment on the Equity in Legal Education and Practice Committee's position. It was emphasized that the report was in fact a discussion paper designed to raise the major issues identified in the letters commenting on the proposed rule and to do so in a neutral way so that the objections and observations raised by members could be considered fairly.
- C.2.3        The subcommittee will make changes to the report consistent with the debate and the Chair will arrange a meeting with the Professional Conduct Committee and the Women in the Legal Profession Committee at which the discussion would be led by the subcommittee.

C.3 Placement of Equity Students

C.3.1 The Director of Student Aid and Placement reported that 18 students are still looking for articles although 5 of them are currently serving articles without pay at Legal Aid Clinics. Of the 18, 9 are equity students, including 7 visible minorities and 2 aboriginals. 2 of the 9 have good prospects for articling. It was agreed that the c.v.'s of the 9 would be made available to the committee members and that the committee members would be asked to take whatever action they could to assist the students in finding articles.

C.3.2 The committee was advised that gay and lesbian students are looking for a place to have their interests represented. It was pointed out that the original terms of reference of the Equity in Legal Education and Practice Committee focused on dealing with minority groups who were under-represented in the legal profession. However, it was the general feeling of the committee that its terms of reference should be enlarged to permit it to deal with all equity issues.

C.4 Law Deans Dinner - November 15, 1993

C.4.1 The Chair reminded the committee members of the Law Deans dinner to be held on Monday, November 15, 1993.

C.5 1994/95 Budget

C.5.1 The committee agreed to leave budget discussions with the Priorities and Planning Committee in the hands of the Chair and the Under Treasurer.

C.6. Educational Initiative of the National Committee of Canadian Filipino Associations

C.6.1 The committee agreed that the Under Treasurer and Nora Richardson should contact the NCCFA to determine the present state of their program and to report back to the committee. At the same time, the Chair will speak to Mr. Ari Dassanayake of the Ministry of Citizenship concerning the consideration that that Ministry is giving to the Law Society's proposal for a program to assist foreign-trained lawyers to qualify in Ontario.

C.7 Recommendations on Employment Equity from Strategic Planning Conference

C.7.1 This item was deferred again as there was insufficient time to deal with it.

C.8 Butterworth Bursaries

C.8.1 The committee was advised that Butterworths have confirmed that the bursaries may proceed in the same manner as last year. This means that \$1,666 will be forwarded to each of the six law schools for their use in assisting equity students.

26th November, 1993

The question was asked why the \$10,000 was allocated equally to the six universities when in fact there is a great disparity not only in the size of the law schools but in their efforts to attract equity students. It was agreed that this was a valid issue to be addressed by the committee but that it was too late to consider its application to the 1993/94 grants. It was agreed that the matter would be considered in respect of the 1994/95 and 1995/96 grants.

ALL OF WHICH is respectfully submitted

DATED this 26th day of November 1993

S. Goudge  
Chair

THE REPORT WAS ADOPTED

INVESTMENT COMMITTEE

Meeting of November 11, 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 11th of November, 1993 at nine-thirty in the morning, the following members being present: Messrs. Wardlaw (Chair), John Seagram and Rowland Bell of Martin, Lucas, Seagram Limited. Staff members present were David Crack and David Carey.

R. \_\_\_\_\_  
ADMINISTRATION

1. Investment Report

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

Approved

2. Investment Activity - Lawyers' Professional Indemnity Company

<u>Purchase</u>	<u>Broker</u>	<u>Current Market</u>	<u>Cost</u>	<u>Yield</u>
\$1,000,000 7.75% PROVINCE OF ONTARIO BONDS due Dec. 8/2003	RBC/DS	100.540	\$1,005,400	7.670%

This investment was made on the advice of the Director of Finance. The Committee was asked to ratify the purchase of this investment.

Ratified

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

J. Wardlaw  
Chair

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

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

(Schedule A)

THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

Meeting of November 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Thursday, the 11th of November, 1993, at 10:30 a.m.

The following members were in attendance: Donald Lamont (Vice-chair in the Chair), Lloyd Brennan, Stephen Goudge, Joan Lax, Laura Legge, Dean Marilyn Pilkington (Osgoode Hall Law School), Mohan Prabhu (non-Bencher member), and Marc Rosenberg (non-Bencher member). Staff in attendance were Marilyn Bode, Brenda Duncan, Marie Fortier, Mimi Hart, Alexandra Rookes, Lynn Silkauskas, and Alan Treleaven.

A.  
POLICY

A.1 PROCEDURES GOVERNING THE RECRUITMENT OF SUMMER STUDENTS FOR THE SUMMER OF 1994

A.1.1 Donald Lamont reported on the survey of firms and students involved in the 1993 Summer Student Recruitment Program in Metropolitan Toronto. The report, the survey results, and the draft Procedures Governing the Recruitment of Summer Students for the Summer of 1994 are attached. (pages 1 - 7) The firms and students seem generally to be satisfied with the existing recruitment process for summer students.

- A.1.2        Recommendation:    It is recommended that the attached draft Procedures Governing the Recruitment of Summer Students for the Summer of 1994 be approved.

B.  
ADMINISTRATION

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No items to report this month.

C.  
INFORMATION

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C.1            JACQUELINE HUSTON

C.1.1        Jacqueline Huston joined the Law Society Bar Admission Course staff on February 1, 1990 as a member of the Ottawa Bar Admission Course Faculty. Ms. Huston has recently decided to leave her position at the Law Society effective December 31, 1993 and to re-enter private practice as a sole practitioner serving children and youth in criminal and civil matters.

C.1.2        The Society and the profession owe an immense debt of gratitude to Ms. Huston for the important work that she has done in her almost four years with the Law Society, and in particular for her outstanding work in course design and teaching in the pioneering days of the new Bar Admission Course. Although Ms. Huston is leaving her position at the Law Society, she will continue to teach in a volunteer capacity both in the Bar Admission Course and for the Law Society's Continuing Legal Education Department.

C.1.3        The search for a new Ottawa member of the Bar Admission Course Faculty is under way, under the direction of Marie Fortier, the Regional Director of Education for Ottawa.

C.2            JOINT SUB-COMMITTEE ON REQUALIFICATION

C.2.1        The final report of the Joint Sub-Committee on Requalification, chaired by Stephen Goudge, was approved by the Legal Education Committee. The report was being presented to the four standing Committees of Convocation to which the Sub-Committee reports: Admissions, Legal Education, Professional Standards, and Women in the Legal Profession.

C.3            LEGAL EDUCATION COMMITTEE SUBCOMMITTEE MEMBERSHIPS

C.3.1        The following are the Legal Education Committee subcommittees:

1.    Articling Subcommittee: Stephen Goudge (Chair), Maurice Cullity, Mohan Prabhu, and Marc Rosenberg. The Subcommittee also includes student representatives and other representatives from the practising bar.
2.    Bar Admission Course Subcommittee: Philip Epstein (Chair), Lloyd Brennan, Dean Donald McRae, and Marc Rosenberg.

3. Continuing Legal Education Subcommittee: Susan Elliott (Chair), Lloyd Brennan, Abraham Feinstein, and Ross Murray.

C.3.2 The Special Subcommittee on Articling Placement expects to report shortly to the Legal Education Committee with recommendations on how procedures governing the recruitment of articling students might be improved. The Special Subcommittee is chaired by Philip Epstein, and comprises representatives of law firms and government.

C.4 MANDATORY CONTINUING LEGAL EDUCATION PROPOSAL

C.4.1 At its Friday, October 15 special meeting, the Legal Education Committee considered the possible introduction of mandatory continuing legal education in Ontario.

C.4.2 The staff are preparing a new draft Report on Mandatory Continuing Legal Education based on the decisions made at the October 15 meeting, together with a proposed budget for conducting detailed design and other preparatory work.

C.4.3 The Chair of the Legal Education Committee will invite the Legal Education Committee and the Finance Committee to review and approve a new draft report and budget in December prior to referring the report and budget to Convocation.

C.5 BAR ADMISSION COURSE FUNDING PROPOSAL

C.5.1 At its Saturday, October 16 meeting the Legal Education Committee considered the funding pressures facing the Bar Admission Course, and in particular how to proceed in the short and long term.

C.5.2 The Chair of the Legal Education Committee will invite the Legal Education Committee and the Finance Committee to review and approve a draft 1994/95 Bar Admission Course budget in December and in particular to determine what contribution to the funding shortfall will be made by students and potentially by members.

C.5.3 An essential feature of the Legal Education Committee's proposal from the retreat is that, once funding is in place to continue the current model of Bar Admission Course, the Legal Education Committee will be able to work with the staff and others to conduct the already planned review and enhancement of the current program.

C.6 ARTICLING STUDENT PLACEMENT CONCERNS

C.6.1 At its Sunday, October 17 meeting the Legal Education Committee considered the shortage of available articling positions both for the short and long term.

C.6.2 Philip Epstein, Marilyn Bode, Mimi Hart and Alan Treleaven met with law students at Osgoode Hall Law School on October 27 and at the University of Toronto Faculty of Law on November 3 to discuss Law Society initiatives and to receive student suggestions and requests.

C.6.3 Mr. Epstein will report orally on the most current statistics.

C.7 BAR ADMISSION COURSE CRIMINAL PROCEDURE EXAMINATION: FRENCH LANGUAGE SECTION

C.7.1 There have been problems faced by the French language section students in the delivery of the Criminal Procedure course and examination.

C.7.2 The Director, after consulting with the Chair and two members of the Committee, subsequently made adjustments to assist the French language section students in Criminal Procedure and the balance of the 1993 Bar Admission Course.

C.7.3 The Committee approved those adjustments.

C.8 STUDENT SPECIAL PETITION

C.8.1 The student failed Phase Three of the 1992 Bar Admission Course by having failed five out of nine examinations. The student was not entitled to write supplemental examinations.

C.8.2 The student was therefore required to repeat Phase Three in its entirety, pursuant to section 3.0 of the then applicable Requirements for Standing:

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.8.3 The Legal Education Committee, at its meeting of June 23, 1993, denied the student's request to be exempted from those aspects of Phase Three in which the student had succeeded in 1992.

C.8.4 The student by letter of October 26, 1993 and Special Petition of October 26, 1993, requested that the Pass grade received in Criminal Procedure in the 1992 Bar Admission Course be substituted for the Fail grade received in Criminal Procedure in the 1993 Bar Admission Course. The student also requested a personal right of appearance before the Committee in a hand-written letter to the Director of October 29, 1993.

C.8.5 The Committee denied the requests.

C.9 ARTICLING SUBCOMMITTEE

C.9.1 The Subcommittee met at 8:00 a.m. on October 22, 1993. In attendance were Stephen Goudge (Chair), Maurice Cullity, Marc Rosenberg, Jay Rudolph, Janne Burton, Dora Nipp, Victoria Colby, and Carmel Sakran. Staff members attending were Marilyn Bode, Deborah Brown, Lynn Silkauskas and Mimi Hart.

C.9.2 The Subcommittee gave conditional approval to an additional four applications from prospective articling principals for the 1992/93 articling year. To October 1993, approximately 1363 members of the profession applied to serve as principals for the 1992/93 articling year. The Subcommittee also gave conditional approval to an additional 116 applications from prospective articling principals for the 1993/94 year. To October 1993, approximately 1197 members applied to serve as principals for the 1993/94 articling year.

- C.9.3 The Subcommittee considered the application of one member. The applicant was applying for approval for the 1993/94 articling term. Although the applicant had no significant negative history with the Law Society, other more senior members of the applicant's firm have a negative history with the Law Society. The Subcommittee approved the member's application on the condition that only the applicant may supervise the work of the articling students for the 1993/94 term. This would not preclude, however, other members of the firm from assigning work to the students.
- C.9.4 The Subcommittee considered an articling item arising from the special Legal Education Committee meeting of October 17, 1993. The item related to making the articling reform requirements more user-friendly. It was agreed that the item would receive further consideration by the Subcommittee. Potential changes to the principal and student mid- and end-of-term evaluations will be considered as part of the review of the articling reform requirements. The articling reform requirements, with any changes, will be considered in the Subcommittee's continuing discussions on the possible sanctions for non-compliance with articling reform requirements by members of the profession.
- C.9.5 Possible sanctions for non-compliance with articling reform procedures by members of the profession were discussed for the 1992/93 and the 1993/94 articling years. The Articling Subcommittee decided that no sanctions would be levied for the 1992/93 articling year against students or principals who did not comply with the requirements. However, students will be required to file end-of-term evaluations before being eligible for call to the bar. This is because the students do not need to rely on the articling principals to comply with this requirement. The Subcommittee also decided not to recommend sanctions for the 1993/94 articling year. This is because the articling term is already well under way. The Subcommittee also believes that members should be advised of possible sanctions in advance of the articling year. The Articling Subcommittee agreed that sanctions should come into effect for the 1994/95 year. Recommendations will be brought forward to a future Legal Education Committee meeting.
- C.9.6 The Subcommittee considered some policy items. The first item was a letter from a part-time articling student who requested that time spent working in a law office on a Sunday count toward completion of the part-time articling requirement. The student's principal may or may not be available on a Sunday to supervise the student. However, a partner in the firm would be available. The Articling Director recommended that the request be denied. The Articling Subcommittee disagreed. It requested that the student provide more detail regarding the proposed part-time arrangement with the law firm, including the type of supervision the student would be receiving on Sunday as well as the kind of work that the firm anticipates the student will be doing. Assuming the information received is satisfactory, the Subcommittee is prepared to approve the arrangement.

26th November, 1993

- C.9.7 The second item was a letter from a student who wished to article in both of the 1993/94 and 1994/95 articling terms. The student had not secured an articling position for the 1993/94 articling term at the time the letter was written. Although the student has since secured a position for the 1993/94 articling term, the Articling Subcommittee considered the issue as a general matter. It was agreed that requests to article for two consecutive articling terms should be denied.
- C.9.8 The third item was whether there should be any changes or expansion to the articulated students' rights of appearance. Marc Rosenberg agreed to review the rights of appearance in criminal law matters. The Articling Director will consult the section heads of the Bar Admission Course for the civil law rights of appearance, including civil litigation and family law.
- C.10 CONTINUING LEGAL EDUCATION REPORT
- C.10.1 The Report, prepared by the Director of Continuing Legal Education, Brenda Duncan, is attached. (pages 8 - 11)

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

P. Epstein  
Chair

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

- Item A. - A.1.1 - Report dated November 2, 1993 re: Summer Student Employment - 1993, survey results and draft Procedures Governing the Recruitment of Summer Students. (pages 1 - 7)
- Item C. - C.10.1 - Continuing Legal Education Report on Courses. (pages 8 - 11)

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE

Meeting of November 11, 1993

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 11th of November, 1993 at 8:30 a.m., the following members being present:

D. Murphy, (Chair), R. Topp, M. Hickey, B. Pepper, M. Weaver and M. Hennessy. G. Howell also attended.

A.  
POLICY

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no items

B.  
ADMINISTRATION

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1. GST - County Law Libraries

The Bruce Law Association (Walkerton) was GST-audited last week and the Revenue Canada auditor is proposing to service notice of a Re-Assessment involving a claim for some \$8,600 over the past 2 1/2 years. The Committee reviewed three documents on this matter:

- a) The Chief Librarian's Briefing Notes to the CDLPA Plenary Session and to the Treasurer on this matter
- b) County of Carleton Law Association letter re-capping a GST audit from 1991 (which is a favourable "precedent")
- c) Ernst & Young response to the proposed Bruce Law Association re-assessment.

The Committee decided that the Law Society's auditors (Ernst & Young) should communicate their opinion to the GST auditor in order that the misunderstanding over "government funding" of county libraries will be corrected and therefore the Re-Assessment will not be made against the Bruce Law Association.

C.  
INFORMATION

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1. CD-Rom Demonstration

A portion of the Committee meeting was spent in the American Room of the Great Library in order to see a demonstration of West's California Reporter on compact disc (CD-Rom). The potential for putting the 75 volumes of the Ontario Reports 2d series 1974 to 1991 was informally discussed, and will be pursued in the next several months.

2. Committee Meeting in Kingston, Ontario

The Committee was asked to consider the possibility of a Committee meeting to be held in Kingston, Ontario in the new year, in order to

- a) meet with the officers of Frontenac Law Association, and

26th November, 1993

- b) visit the premises of QL Systems, which operates the Law Society's Ontario Reports database.

The Committee decided that it would hold its next meeting in Kingston, Ontario on Wednesday January 12th (the day before Committee day in Toronto on January 13th).

3. QL Systems Ltd.

The annual audited financial statements to May 31, 1993, of QL Systems Ltd. of Kingston, Ontario were received.

4. County & District Law Presidents' Association Library Resolutions

Two resolutions on county library matters which were passed unanimously at the November 10th 1993 plenary session of the County & District Law Presidents' Association (CDLPA) were received. The first resolution deals with local library fees for 1994 and the Law Society's county library levy for 1994-95, and the second resolution deals with the matter of mandatory Law Society collection of local fees, as well as technology possibilities (including the Ontario Reports and Law Society educational materials on CD-Rom).

ALL OF WHICH is respectfully submitted

Dated this 26th day of November, 1993

D. Murphy  
Chair

THE REPORT WAS ADOPTED

DRAFT MINUTES - OCTOBER 21 AND 22, 1993

(Draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

Meeting of November 11, 1993

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 11th of November, at 3:00 p.m., the following members being present: C. McKinnon (Chair), R. Murray (Vice Chair), M. Weaver (Vice Chair), R.W. Cass, N. Graham, D. Murphy, H. Warder Abicht (non-Bencher member).

Also Present: N. Amico, S. McCaffrey, P. Rogerson.

A.  
POLICY

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- A.1.            STRATEGIC PLANNING CONFERENCE
- A.1.1.        This matter was deferred to the January meeting of this Committee.
- A.2.            JOINT SUB-COMMITTEE ON REQUALIFICATION
- A.2.1.        The Joint Sub-Committee on Requalification has submitted its final report to the four Committees to which the sub-committee reports. The Professional Standards Committee considered the report and has approved it for consideration by Convocation.
- A.3.            RULE 2 - REVISED FORMAT
- A.3.1.        A revised copy of the draft Rule 2 was presented to the Committee. The Committee began its review of the draft, and will continue the review at its January meeting.

B.  
ADMINISTRATION

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- B.1.            PRACTICE REVIEW PROGRAMME - FILE CLOSURES
- B.1.1.        Two Practice Review files were closed on the basis of the solicitors' successful completion of the Practice Review Programme. The first member was authorized for participation in the Programme in May, 1992 based on a referral from the Audit department which had concerns regarding the solicitor's books and records. The Professional Standards Department's Systems Advisor and Staff Lawyer attended at the solicitor's office on four occasions to provide assistance with books and records and practice management. The solicitor appears to have implemented the recommendations provided. The second member was authorized for participation in the Programme in September, 1991. At the time of authorization the solicitor had 13 complaints and 5 Errors and Omissions claims. A reviewer attended at the solicitor's office in March, 1992 and staff met with the solicitor in January and June of 1993. A Review Panel convened in October, 1993, concluded that the solicitor had made significant progress in the Programme. It appears that both solicitors have benefitted from their involvement in the Practice Review Programme.
- B.1.2.        The Committee closed a third member's file. The solicitor was authorized for participation in the Programme in January, 1993 after undertaking to the Discipline Committee to participate in the Practice Review Programme. A reviewer attended at the solicitor's office in August, 1993. The solicitor is no longer practising law and has decided to close down his office by December 1, 1993. The Committee has closed the member's file based on the fact that he is no longer practising law.

C.  
INFORMATION

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C.1.           PRACTICE REVIEW PROGRAMME - FILE CLOSURES

C.1.1           The solicitor was authorized for participation in the Practice Review Program in January, 1990. He was found guilty of professional misconduct and was disbarred on October 21, 1993. Accordingly, the file has been closed.

C.1.2.           A solicitor who was authorized for participation in the Programme in September of 1993 has subsequently died. Accordingly, the file has been closed.

C.2.           DISCIPLINE POLICY - RULE 20

C.2.1.           At its October meeting the Discipline Policy Committee considered the issue of the development of a procedural format for applications under Rule 20 of the *Professional Conduct Handbook*. Convocation approved in October, 1993 the following procedure on Rule 20 applications insofar as the Professional Standards Department is involved: If Convocation approves the employment arrangement being proposed pursuant to Rule 20, the Professional Standards Department will conduct an on-site review approximately six months after the commencement date.

C.2.2.           Relatively few such applications are received, and fewer approved. The impact on the resources of the Professional Standards Department is thus anticipated to be minimal.

C.3.           PRACTICE ADVISORY SERVICE - STATUS REPORT

C.3.1.           The number of calls received during the month of September was 629. Of these calls, 280 were received from sole practitioners, 253 from other members of the profession, and 96 from support staff and others. 380 calls came from Metro Toronto, and 249 from other parts of the Province.

C.3.2.           There have been many comments during the month on the Errors & Omissions Department video from members who have called with a question prompted by consideration of the fact situations shown on the video.

C.3.3.           There continue to be a number of distressed members calling for assistance because of financial difficulties.

C.3.4.           Don Godden attended in Thunder Bay on the weekend of October 28-30 for the Thunder Bay Law Association Fall 1993 C.L.E. Event and spoke as part of the Practice Issues programme.

C.4. PROFESSIONAL STANDARDS - DEPARTMENTAL REPORT

- C.4.1. With regret, the Law Society has accepted the resignation of Judi Singleton, the Systems Advisor for both Practice Advisory and Professional Standards, effective November 12, 1993. The Law Society had numerous positive comments from lawyers about Judi's ability to make bookkeeping comprehensible, in the Start-Up Workshops, the Books and Records Programs, and in their own offices. We wish Ms. Singleton all the best in her future endeavours.
- C.4.2. Authorization was granted in October for an additional 6 lawyers to participate in the Practice Review Programme, bringing the number of open files to 133. Authorization is being sought this month for another 6 lawyers to participate, and 5 files are being presented to the Committee for closing, including the first file ever opened in the Programme, in 1986, due to the disbarment of that member.
- C.4.3. Laura Legge and Ron Cass sat on a review panel in October, reviewing three lawyers participating in the programme. It is apparent that the frequency of review panels cannot, at this rate, keep pace with the numbers of lawyers participating, and the scheduling of review panels could well become a full-time administrative position.
- C.4.4. Staff of the Practice Advisory Service and the Professional Standards Departments met recently with Don Thompson, the Director of Competency and Education for the Law Society of British Columbia, to discuss British Columbia's initiatives in dealing with competency concerns.

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

C. McKinnon  
Chair

THE REPORT WAS ADOPTED

SPECIAL COMMITTEE ON RELIEF AND ASSISTANCE

Meeting of November 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON RELIEF AND ASSISTANCE begs leave to report:

Your Committee met on Thursday, 11<sup>th</sup> of November, 1993 at two-thirty in the afternoon, the following members being present: M.P. Weaver (Chair), R.W. Cass, S. Lerner, P.B.C. Pepper, and H. Sealy. Also present was D.E. Crack.

26th November, 1993

B.  
ADMINISTRATION

1. APPLICATION FOR FUNDING FROM COMMUNITY LEGAL CLINICS

A letter dated October 25, 1993 from Joan Lax, Chair of the Clinic Funding Committee was before the meeting. The letter described a request for funding from the J. Shirley Denison Fund to pay a small honorarium to each of six articling students endeavouring to complete their articling requirements in community legal clinics on a volunteer basis. The request is for \$8,000 per student, for a total of \$48,000.

The Committee discussed the matter in the context of the terms of the Denison Bequest which state briefly:

"...My trustee shall after my sister's death pay to or deliver to the Law Society of Upper Canada the residue of my estate, the same to be applied from time to time by the Treasurer and Benchers, and both as to capital and income as they may see fit, for the relief of impoverished or indigent members of the Law Society and of their wives, widows and children, including among such wives, widows and children those of any member of the Law Society who may have been disbarred or suspended."

It was resolved that a maximum of \$24,000 be set aside, but that consideration be made only on the strength of the students' individual applications setting out full detail of their circumstances.

2. APPLICATION FOR DEFERRAL OF THE 1993/94 ANNUAL MEMBERSHIP FEES

Applications from 20 members requesting deferral for up to one year of payment of the 1993/94 annual fees were before the meeting.

Approved

ALL OF WHICH is respectfully submitted

DATED this 26<sup>th</sup> day of November, 1993

M. Weaver  
Chair

THE REPORT WAS ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meeting of November 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of November 1993 at 8:00 a.m., the following members being present:

L. Brennan (Chair), F. Carnerie, S. Elliott, C. Hill, A. Lawrence, F. Mohideen, R. Murray, H. Sealy and M. Somers.

Also present: R. Tinsley, A. Brockett, E. Spears and S. Hodgett.

A.  
POLICY

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A.1. REPORT OF THE SUBCOMMITTEE ON THE ROLE OF THE LAW SOCIETY

A.1.1. Your Committee had before it the Report of the Subcommittee on the Role of the Law Society and transmits it to Convocation with this Report. The Research and Planning Committee has adopted the Report herein and wishes to notify Convocation of the following motion which will be made at the Convocation to be held on December 11, 1993.

Motion to be moved at the December 11 meeting of Convocation

That Convocation:

- receive the report of the Subcommittee on the Role of the Law Society;
- adopt the role statement and commentary;
- direct the Priorities and Planning Committee to employ the role statement, the commentary and the report of the Subcommittee as a guide in preparing budgetary and program recommendations for the fiscal year 1994-1995 and subsequent fiscal years; and
- direct all committees to review their activities, programs and proposals in light of the role statement, the commentary and the report of the Subcommittee.

A.2. METROPOLITAN TORONTO PRO BONO LEGAL SERVICES PROJECT

A.2.1. Your Committee considered a proposal to establish the following project in conjunction with the United Way of Greater Toronto and the Canadian Bar Association - Ontario.

Introduction

A.2.2. Since 1988, the Law Society's Research and Planning Committee has had a Voluntary Pro Bono Subcommittee (chaired by bencher Ronald Manes) looking into ways of linking lawyers who are willing to offer *pro bono* legal services with members of the public who do not qualify for Legal Aid but who cannot afford to pay legal fees.

A.2.3. An extensive survey undertaken by the Subcommittee in 1990, among ninety non-profit organizations, concluded that there was a need for *pro bono* legal services for charitable and non-profit organizations.

- A.2.4. In 1991, Convocation adopted a proposal to conduct pilot projects in Middlesex County and Hamilton, in co-operation with the local Law Associations. Lawyers in the two districts were invited to participate in a scheme under which they would make their legal services available, *pro bono*, to eligible charitable and non-profit organizations. Fifty-eight lawyers in Middlesex and fifty-two in Hamilton agreed to participate.
- A.2.5. The pilot projects commenced in January 1992 with the distribution of a brochure outlining the scheme to 816 non-profit organizations in Middlesex and 743 in Hamilton-Wentworth.
- A.2.6. Certification of an organization as "eligible" to apply for *pro bono* legal services was central to the scheme. The local Law Associations were responsible for assessing applicant organizations to determine whether or not they were "eligible". The primary criterion for eligibility was the inability to afford the cost of legal services. If certified as "eligible", an organization in the district was able to call the Law Society's Lawyer Referral Service, and the operator gave the organization the name of a local lawyer who had volunteered to participate in the project.
- A.2.7. A preliminary evaluation of the two pilot projects in the fall of 1992 found that demand for the service had been very limited. Difficulties were identified in two main areas:
- making the service known among non-profit organizations; and
  - assessing the eligibility of the organizations that applied.
- A.2.8. It was concluded that if a scheme of this nature were to succeed, greater administrative resources and more active publicity would be required. The Law Society's Research and Planning Committee agreed that Ronald Manes should explore the possibility of active participation from representatives of non-profit organizations and co-ordinating groups such as the United Way. On February 23, 1993, Ronald Manes and other representatives of the Law Society met with Susan Pigott and Suzanne Senior-Mitchell of the United Way of Greater Toronto. The United Way currently allocates funds to approximately 250 charitable agencies and maintains contacts with at least 50 others.

Scheme Proposed by the United Way

- A.2.9. As a result of the February, 1993 meeting, the United Way proposed a scheme in which the Law Society would be responsible for co-ordinating the response of the legal profession.
- A.2.10. Under the scheme proposed by the United Way, the Law Society would have been responsible for:
1. Recruiting lawyers to respond to requests for *pro bono* legal assistance.
  2. Recruiting lawyers to conduct workshops/seminars (on a *pro bono* basis) on relevant legal issues for United Way funded agencies.
  3. Recruiting lawyers to write articles (on a *pro bono* basis) for the monthly CTIS *Leadership Bulletin*.

Research and Planning Committee, May 13, 1993

- A.2.11. The Law Society's Research and Planning Committee considered the United Way proposals at its meeting in May, 1993. Questions arose as to how the Law Society would administer its obligations under the proposed scheme. The "recruiting" of lawyers would require on-going part-time staff services which the Law Society was not in a position to provide under its existing budget.
- A.2.12. It was suggested that while it might be appropriate for the Law Society to identify professional obligations and opportunities, and to bring such matters to the attention of the profession, it was not necessarily the proper role of the Law Society to undertake responsibility for fulfilling those obligations. The Canadian Bar Association - Ontario, as a body representative of the profession, might be the more appropriate organization to implement a scheme of this nature. Ronald Manes was asked to discuss the matter with the CBA-O.

Meeting of May 25, 1993

- A.2.13. On May 25, 1993, Ronald Manes met with Garth Manning (a member of the original Voluntary Pro Bono Subcommittee and of the Steering Committee established to oversee the Middlesex and Hamilton pilot projects), Richard Tinsley and Andrew Brockett (members of the Law Society staff). Those present prepared the scheme set out below. Ronald Manes agreed to present the proposal to the Canadian Bar Association -Ontario.
- A.2.14. At its meeting on October 20, 1993, the Executive Committee of the Canadian Bar Association - Ontario approved the proposal.

THE PROPOSAL

Sponsors

- A.2.15. The United Way of Greater Toronto.
- A.2.16. The Canadian Bar Association - Ontario.
- A.2.17. The Law Society of Upper Canada.

Objectives

- A.2.18. To provide legal services, *pro bono*, to non-profit social service organizations which satisfy eligibility criteria established by the sponsors.
- A.2.19. To provide lawyers who will conduct workshops and seminars on legal issues (on a *pro bono* basis) for eligible social service organizations.
- A.2.20. To provide lawyers who will write articles (on a *pro bono* basis) on legal issues for the United Way's monthly Consulting, Training and Information Services *Leadership Bulletin*.

Tripartite Committee

- A.2.21. A Tripartite Committee to be established comprising a representative of the United Way of Greater Toronto, an elected member of the CBA-O Executive, and a Law Society bencher.
- A.2.22. The Tripartite Committee will
- A.2.22.1. - be responsible for the effective operation of the project;
  - A.2.22.2. - determine the criteria which organizations must satisfy if they are to be entitled to *pro bono* legal services under the project;
  - A.2.22.3. - supervise the work of the Administrator;
  - A.2.22.4. - assist the Administrator by recruiting lawyers to meet specific requests where the appropriate CBA-O Section is unable to provide a lawyer.

Proposed Responsibilities of the United Way of Greater Toronto

- A.2.23. To appoint a representative to the Tripartite Committee.
- A.2.24. To promote the scheme among social service organizations.
- A.2.25. To screen and assess requests for legal assistance from social service organizations to determine their eligibility.
- A.2.26. To forward requests from eligible organizations to the Administrator.

Proposed Responsibilities of the Law Society

- A.2.27. To appoint a bencher to the Tripartite Committee.
- A.2.28. To encourage continuing discussion of ways in which the *pro bono* obligations of the profession might be met.
- A.2.29. To assist in publicizing the scheme through the *Bencher's Bulletin* and other mailings to the profession.

Proposed Responsibilities of the CBA-O

- A.2.30. To appoint an elected member of the CBA-O Executive to the Tripartite Committee.
- A.2.31. To provide the part-time services of a member of staff to serve as Administrator.
- A.2.32. To consider adopting a policy resolution declaring that one of the roles of the CBA-O Sections is to meet requests from eligible non-profit and charitable organizations for *pro bono* legal services.

26th November, 1993

Role of the Administrator

- A.2.33. When a request is received through the United Way or directly from an eligible social service organization, to ask the Chair of the appropriate CBA-O Section to provide the name of a qualified lawyer who would be willing to meet the request on a *pro bono* basis.
- A.2.34. To ensure that all requests from eligible organizations are met promptly by the provision of the name of a lawyer willing to undertake the service on a *pro bono* basis.
- A.2.35. To provide the name of a lawyer (either from a CBA-O Section or from the CBA-O Speakers Bureau) to meet requests from the United Way for a *pro bono* speaker on a specific issue.
- A.2.36. To provide to the United Way names of lawyers willing to write articles for the *CTIS Leadership Bulletin*.

Financial Impact

- A.2.37. The responsibilities of the Law Society under the proposed project are clearly defined. The financial impact will be negligible.

Recommendation

- A.2.38. Your Committee recommends that Convocation approve the proposal outlined in paragraphs A.2.15-37 for the Law Society's participation in the Metropolitan Toronto Pro Bono Legal Services Project.
- A.2.39. Your Committee recommends that Ronald Manes be appointed the Law Society's representative on the Tripartite Committee.

B.  
ADMINISTRATION

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No matters to report.

C.  
INFORMATION

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No matters to report.

ALL OF WHICH is respectfully submitted

DATED this 26th day of November 1993

L. Brennan  
Chair

26th November, 1993

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

Item A.- A.1.1. - Report of the Subcommittee on the Role of the Law Society.  
(Appendix A, pages (33))

THE REPORT WAS ADOPTED

SPECIALIST CERTIFICATION BOARD

Meeting of November 11, 1993

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 11th of November, 1993 at nine o'clock in the morning, the following members being present: R.D. Yachetti (Chair), R.D. Manes (Vice-Chair), D.W. Scott (Vice-Chair), A.M. Cooper, C.D. McKinnon and M.L. Pilkington. S. Thomson, of the Law Society, was also present.

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

The Criminal Law Specialty Committee met (in person/conference call) on Friday, the 29th of October, 1993 at one o'clock in the afternoon.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 9th of November, 1993 at eight o'clock in the morning.

A.  
POLICY

No items.

B.  
ADMINISTRATION

B.1. SIX-MONTH EXTENSION OF CERTIFICATES

B.1.1. The Board approved a six-month extension of the Specialist Certificates of all lawyers certified on December 7, 1988 (expiry date December 6, 1993) whose recertification applications have been received but not yet processed or who have indicated an intention to submit an application for recertification in the near future.

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 lawyer as a Civil Litigation Specialist:

James R. Howie (of Toronto)

Note: Items C.1. and C.1.1. deleted

C.2.           RECERTIFICATION OF SPECIALISTS

C.2.1.        The Board is pleased to report the recertification for an additional five years of the following lawyers as Civil Litigation Specialists:

Murray Armel (of Toronto)  
Robert P. Armstrong (of Toronto)  
H. Robert Barlow (of Mississauga)  
D. Michael B. Bean (of Guelph)  
Philip W. Benson (of Toronto)  
Dalton E. Charters (of Windsor)  
Garret J. Cooligan (of Ottawa)  
William M. Davis (of Ottawa)  
Darcy G. Duke (of Toronto)  
W. Graham Dutton (of Toronto)  
Harold H. Elliott (of Toronto)  
John F. Evans (of Hamilton)  
Jack J. Fireman (of Toronto)  
Gerard D. Fitzhenry (of Brampton)  
J. Peter Giffen (of Kitchener)  
Douglas W. Goudie (of Toronto)  
Morton Greenglass (of Toronto)  
George W. Hately (of Toronto)  
Thomas R. Hawkins (of Toronto)  
Thomas G. Heintzman (of Toronto)  
Philip D. Isbister (of Toronto)  
Frank A. Johnston (of Peterborough)  
Roydon J. Kealey (of Ottawa)  
Frederick W. Knight (of Windsor)  
Henry M. Lang (of Sault Ste. Marie)  
R. Bruce Lawson (of Toronto)  
Glenn A.J. MacPherson (of Toronto)  
W.H. Peter Madorin (of Kitchener)  
Benjamin Marcus (of Ottawa)  
Michael T. Mollison (of Kitchener)  
H. Lorne Morphy (of Toronto)  
Wallace L. Murray (of Owen Sound)  
James W.W. Neeb (of Kitchener)  
E. Peter Newcombe (of Ottawa)  
Miles D. O'Reilly (of Toronto)  
Leon Paroian (of Windsor)  
Elliott R. Pepper (of Toronto)  
Julian Polika (of Toronto)  
Frank D. Powell (of Parry Sound)  
Denis J. Power (of Ottawa)  
Vernol I. Rogers (of Toronto)  
Ronald J. Rolls (of Toronto)  
Jeffrey Sack (of Toronto)

26th November, 1993

D. Grant Scheifele (of Meaford)  
David W. Scott (of Ottawa)  
Robert A. Smith (of Toronto)  
Peter C.P. Thompson (of Ottawa)  
Barrie M. Wilson (of Cornwall)

C.2.2. The Board is pleased to report the recertification for an additional five years of the following lawyers as Criminal Litigation (Law) Specialists:

Stanley J. AvRuskin (of Toronto)  
Robert J. Carter (of Toronto)  
David C. Smith (of Guelph)

C.2.3. Convocation is reminded that each recommendation for recertification follows an extensive application procedure, including adequate completion of a recertification application form, detailed peer assessment, a review by Professional Standards staff of the applicant's Law Society record (with an emphasis on the applicant's complaints and errors and omissions history, where applicable), publication of the applicant's name in the Ontario Reports, and a review of the applicant's file by the appropriate Specialty Committee and subsequently the Specialist Certification Board.

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

R. Yachetti  
Chair

THE REPORT WITH THE EXCEPTION OF ITEMS C.-C.1. & C.1.1. WAS ADOPTED

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of November 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of November, 1993 at 9:30 a.m., the following members were present: M. Hickey (Acting Chair), N. Graham, C. Hill, S. Lerner and M. Weaver. Also in attendance were: A. John (Secretary) and J. West.

B  
ADMINISTRATION

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1. The Committee authorized one prosecution pursuant to s.50 of the Law Society Act.

2. FINANCIAL PLANNERS

On October 12, 1993, the Globe and Mail reported that financial planners were able to prepare wills for members of the public. The Law Society denied that this represented the current state of the law and these views were subsequently published by the Globe and Mail on November 9, 1993. Confusion over the issue of trust companies and financial planners engaged in the preparation of wills has arisen frequently in the past because of a Statement of Policy issued by the Society in 1965 (copy attached).

Your Committee recommends a review of the 1965 Policy and has asked the Chair to appoint one or more persons to perform this task.

3. ADVOCACY AND DISPUTE RESOLUTION REVIEW - 1993

Harry W. Arthurs, President emeritus and Professor of Law at York University has prepared a document for the Ontario Government, entitled A Review of Advocacy and Dispute Resolution in the Ontario Automobile Insurance System. S.9 refers to representation by independent paraprofessionals.

Your Committee was advised that The Advocates' Society has prepared a response to this Review. The matter will be discussed at the next meeting of the Committee.

ALL OF WHICH is respectfully submitted

DATED the 26th day of November, 1993

P. Peters  
Chair

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

- Item B - 1. - List of Prosecutions and Court Dates. (page 2)
- Item B - 2. - Statement of Policy issued by the Law Society in 1965. (page 3)

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of November 11, 1993

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 11th of November 1993 at 3:00 p.m., the following members being present:

S. Elliott (Chair), B. Humphrey, J. Lax, B. Luke and J. Palmer.

Also present: A. Treleavan, E. Spears and S. Hodgett.

A.  
POLICY

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A.1. REPORT OF THE JOINT-COMMITTEE ON REQUALIFICATION

A.1.1. Your Committee considered the Report of the Joint-Committee on Requalification. In the past the Committee has expressed concern about possible adverse impact of a requalification policy on women in the profession. A member of the Women in the Legal Profession Committee was appointed to the Joint-Subcommittee to address these concerns.

A.1.2. The Committee reviewed the Report and concluded that the proposed policy will serve to protect the public, yet will not disproportionately affect women members of the profession.

A.1.3. Your Committee recommends that Convocation adopt the Report of the Joint-Committee on Requalification.

B.  
ADMINISTRATION

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No matters to report.

C.  
INFORMATION

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C.1. THE REPORT OF THE CBA TASK FORCE ON GENDER EQUALITY IN THE LEGAL PROFESSION

C.1.1. Your Committee asked a subcommittee to consider the recommendations of in the Report of the CBA Task Force on Gender Equality and outline a work-plan. The Committee reviewed the recommendations and

26th November, 1993

has placed a number of issues raised in the Task Force Report on its agenda for upcoming meetings.

ALL OF WHICH is respectfully submitted

DATED this 26th day of November 1993

S. Elliott  
Chair

THE REPORT WAS ADOPTED

AGENDA - ITEMS TO BE SPOKEN TO

COMMUNICATIONS COMMITTEE

Ms. Bellamy spoke to Item C.-C.2. re: Client Information System.

HERITAGE COMMITTEE

Mr. Wardlaw spoke to Item A.-2. re: Care and Maintenance of the Law Society's Art Collection.

LEGAL EDUCATION COMMITTEE

Mr. Epstein spoke to Item C.-C.6 re: Articling Student Placement Concerns.

Mr. Epstein also reported on the concerns of students in the Bar Admission Course regarding failure rates and marking schemes.

RESEARCH AND PLANNING COMMITTEE

Mr. Brennan spoke to Item A.-A.2. re: Metropolitan Toronto Pro Bono Legal Services Project.

LEGISLATION AND RULES COMMITTEE

Mr. Cullity spoke to Item B.-B.1. re: Regulation 708, Item B.-B.2. re: Rules Made Under Subsection 62(1) of the Law Society Act: Rule 6 and Item B.-B.6. re: Rules Made Under Subsection 62(1) of the Law Society Act: Amendments of Parts of Rule 50.

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AGENDA - COMMITTEE REPORTS AND SPECIFIC ITEMS REQUIRING CONVOCATION'S CONSIDERATION AND APPROVAL

LEGISLATION AND RULES COMMITTEE

Mr. Cullity presented Item A.-A.1. re: Regional Election of Benchers for Convocation's approval.

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 11th of November, 1993, at 4:30 p.m. the following members being present: M. Cullity (Chair), R. Cass, S. Lerner, S. Thom.

Also present: D. Crosbie, A. Brockett, E. Spears.

A.  
POLICY

A.1. REGIONAL ELECTION OF BENCHERS

- A.1.1. On October 22, 1993, the Committee requested directions from Convocation with respect to the consequences of a regionally-elected bencher leaving the region during the term of office.
- A.1.2. Convocation referred the matter back to the Committee with instructions to prepare a report discussing the possible alternatives and the consequences of each of them. As the appropriate solution may have some impact on other questions - including the methods of filling other vacancies in regions - the Committee's consideration of the necessary amendments to the *Law Society Act*, the Regulations and the Rules is on hold until this question is resolved.
- A.1.3. Two discussion papers dealing with the subject were prepared for consideration by members of the Committee. They are attached to this report as Attachments A and B.
- A.1.4. As the discussion papers indicate, the large number of possible alternative solutions is a consequence of the existence of certain policy issues that need to be resolved and on which the Committee seeks Convocation's guidance.
- A.1.5. The main problem is that, if a regionally-elected bencher who leaves the region is to be replaced in the region, there will then be 41 elected benchers unless either the moving bencher or some other elected bencher is to lose office.
- A.1.6. To deprive the moving bencher from office could be regarded as harsh if he or she had received sufficient votes from benchers across the province to be elected as a bencher at large. It would be to penalize the moving bencher for his or her success in the regional election as other elected benchers who have addresses in the region could move without affecting their status as benchers.

- A.1.7. To remove some other eligible benchers from office - presumably a benches elected with the fewest votes from members at large (in the division in which Region X is located?) - might also be regarded as inappropriate as it would give the regionally-elected benches power to determine whether nine other elected benches would continue in office.
- A.1.8. It appears that there is no entirely satisfactory solution to the problem of the moving benches and there are numerous permutations but the Committee should be able to prepare the necessary amendments if answers to the questions of policy set out below are provided. These questions, the advantages and disadvantages of affirmative or negative answers to each of them and the Committee's recommendations to Convocation are as follows:
- A.1.9. *Must there always be a regionally-elected benches in Region X?*

Note: Motion, see page 267

- A.1.9.1. The answer to this question will determine whether it is necessary to replace the moving benches in Region X and to consider whether that benches will cease to be a benches for all purposes. If the answer is "no", the problem of the moving benches could simply be ignored and the three other policy issues would not need to be addressed.
- A.1.9.2. The main argument for an affirmative answer is that it should be regarded as implicit in the principle of regional representation that there be a regionally-elected benches in Region X at all times. Although neither the Ferguson Committee nor the Scott Committee addressed the problem of the moving benches, the Ferguson Report did recommend that, at least in certain cases, vacancies created when a regionally-elected benches ceases to be a member of the Law Society should be filled by the election of another benches from the region.
- A.1.9.3. The principal argument for not replacing the benches who moves would deny that the need to appoint a substitute in the region is necessarily implicit in the principle of regional representation. The reason why an address in the region is required at the time of the election is to allow people in each region to elect someone they know and have confidence in and who will be familiar with any special concerns affecting the profession or the public in that region. Arguably, the continued presence of the benches in the region throughout the whole of the 4-year term is significantly less important. It is not clear why it should be assumed that a subsequent change of geographic location would necessarily cause the moving benches to forfeit the confidence of the members in the region to an extent that would make it imperative that another benches from the region be elected. A benches from Thunder Bay who moves to Ottawa does not thereby become inaccessible. Ideally, it might be desirable for regionally-elected benches to remain in the region but, given the absence of any completely satisfactory solution to the problem of the moving benches, the complexities and difficulties with the other possible solutions and the infrequency with which the problem is likely to arise, it can be argued that the most tolerable solution is the easiest: namely, to attach no consequences to a change of address. This would be consistent with the traditional practice when an elected benches moves into, or out of, Metropolitan Toronto.

- A.1.9.4. The Committee's recommendation is that a new bencher should be appointed from the region to replace the moving bencher.
- A.1.10. *Must the number of elected benchers remain fixed at 40?*
- A.1.10.1. The answer to this question will determine whether it is necessary for either the moving bencher or (presumably) the bencher with the lowest votes from members at large to cease to be a bencher if a replacement bencher is to be elected from the region.
- A.1.10.2. The principal argument for an affirmative answer is that the Ferguson Committee specifically considered and rejected an increase in the number of elected benchers and this was accepted by Convocation.
- A.1.10.3. The main argument for a negative answer is that it would remove the necessity for terminating the office of one elected bencher whenever the regionally-elected bencher moved from Region X and was replaced by another bencher from the region.
- A.1.10.4. The Committee's recommendation is that the number of elected benchers should remain fixed at 40.
- A.1.11. *Should the moving bencher cease to be a bencher even though he or she had received sufficient votes from members at large to be elected?*
- A.1.11.1. The argument for the proposition that the moving bencher should lose office is that, if one elected bencher must be deprived of office, it should be the bencher who is to be replaced in Region X. That bencher created the problem and it would be unfair to deprive another bencher of office because of the former's decision to move from Region X. This conclusion might also be supported on the ground that, although it is not entirely satisfactory, it is the most tolerable of a number of not entirely satisfactory solutions if a replacement bencher is to be elected from the region.
- A.1.11.2. The argument for the proposition that the moving bencher should remain in office if he or she had received sufficient votes from electors at large to be elected as a bencher is that the contrary conclusion would penalize the bencher in whom voters in the region (and possibly in the province) had most confidence and respect. Such a bencher would be in a worse position than benchers to whom the members gave fewer votes. For example, the bencher who received the most votes from members at large might also be the bencher elected for the City of Toronto. On moving to North York or Ottawa, he or she would cease to be a bencher. Other benchers elected in Toronto with fewer votes could change their address without losing office unless the traditional practice is changed. The moving bencher did not choose to be the bencher for Toronto and would have had no power to elect to be a bencher at large. He or she would be penalized for receiving too many votes.
- A.1.11.3. The Committee's recommendation is that the moving bencher should lose office.

- A.1.12. *Must the moving bencher be replaced in Region X if there are other elected benchers in the region?*
- A.1.12.1. If the answer to this question is "no", it may not always be necessary to replace the moving bencher in Region X. If there is at least one other elected bencher in Region X, that one, or the one with the highest number of votes from members in the region, could be considered (if it is necessary to do so for any purpose) as the regionally-elected bencher.
- A.1.12.2. The argument for an affirmative answer is, presumably, that the other benchers in Region X would have been elected by members at large and not solely by members of the region. There might, for example, have been an unsuccessful candidate for election in the region who received more votes cast by members in the region than any of the benchers who were elected from the region by members at large.
- A.1.12.3. The argument against replacing the moving bencher when there are other benchers in the region is that logic should at some stage give way to expediency and practicality. While it is possible that there may have been an unsuccessful candidate who received more votes from members in the region than any of the other benchers, it is possible and probably more likely that one of the benchers in the region will have received the second highest total of votes from members in the region. In this situation, the principle of regional representation would not require the election of another bencher from the region.
- A.1.12.4. When dealing with vacancies that arise when a bencher ceases to be a member of the Society, the Ferguson Committee recommended that another bencher in the region should be elected when "there is a vacancy in the requisite number of benchers from a particular electoral region". This appears to mean that it would not be necessary to replace the departing member with another member from the region if there is another elected bencher in the region. If that is a correct interpretation of the Ferguson Committee's report, it would seem to follow that the Committee did not believe that it was necessary for the number of benchers elected from the region to remain constant throughout the term.
- A.1.12.5. The Committee recommends that the moving bencher should only be replaced in Region X if there is no other elected bencher in that region. Acceptance of this recommendation would mean that it would not always be necessary for the moving bencher to lose office and the Committee's recommended answer to question 3 would be qualified accordingly.

B.  
ADMINISTRATION

B.1. REGULATION 708: REVOCATION OF CLAUSE 6(1)(b): AMENDMENT OF REMAINDER OF SECTION 6: ADMISSION OF PERSON FROM OUTSIDE ONTARIO FOR THE PURPOSE OF ACTING AS CROWN ATTORNEY IN ONTARIO FOR A SPECIFIED TIME EXCLUSIVE TO SECTION 28.1 OF THE LAW SOCIETY ACT; ADMISSION OF PERSON FOR OCCASIONAL COURT APPEARANCE EXCLUSIVE TO SECTION 6; SECTION 6 TO PARALLEL SECTION 28.1

B.1.1. Recommendation

B.1.1.1. That section 6 of Regulation 708 be revoked and replaced by the text set out below in the right hand column:

CURRENT TEXT

PROPOSED TEXT

[Proposed text which differs from the current text is underlined. Notes on the proposed amendments are found in Attachment C.]

ADMISSIONS FOR  
OCCASIONAL COURT APPEARANCE

ADMISSIONS FOR  
OCCASIONAL COURT APPEARANCE

6. (1) A person who is a Canadian citizen or a permanent resident of Canada, who is of good character and who is qualified to practise law in any province of Canada outside Ontario may, in the discretion of Convocation, be admitted to membership in the Society and called to the bar and admitted as a solicitor for the purpose of,

6. (1) A person who is a Canadian citizen or a permanent resident of Canada, who is of good character and who is qualified to practise law in any province or territory of Canada outside Ontario may, in the discretion of Convocation, be admitted to membership in the Society for the purpose of appearing as counsel in a specific proceeding.

(a) appearing as counsel in a specific proceeding; or

(b) acting as a Crown attorney for a specific time.

(2) A person admitted to membership under subsection (1), who has taken the oath or given the affirmation prescribed for members by the rules, shall be deemed to be called to the bar and admitted and enrolled as a solicitor for the purpose

- of appearing as counsel in a specific proceeding.
- (2) It is a condition of admission to membership that,
- (a) a candidate who is admitted for the purpose of clause (1)(a) or (b) undertake that he or she will not otherwise engage in the practice of law in Ontario; and
- (b) a candidate who is admitted for the purpose of clause (1)(a) file with the Society a consent to accept service in respect of the litigation by an agent who is a member of the Society, together with the agent's name and Ontario address.
- (3) Upon the completion of such proceeding or upon the expiration of the specified time, as the case may be, he or she shall be deemed to have applied to the Society for permission to resign.
- (3) It is a condition of admission to membership under subsection (1) that a candidate,
- (a) undertake that he or she will not otherwise engage in the practice of law in Ontario; and
- (b) file with the Society the consent, to accept service in respect of the litigation, of an agent resident in Ontario who is a member of the Society, together with the agent's name and Ontario address.
- (4) Upon the completion of the specific proceeding, a person admitted to membership under subsection (1) shall be deemed to have applied to the Society for permission to resign.

B.1.2. Explanation

- B.1.2.1. At present, a Canadian citizen or a permanent resident of Canada, who is qualified to practise law in any province of Canada outside Ontario, and who expects to act as a Crown attorney in Ontario for a specified time, may apply for temporary admission to the Law Society pursuant to either clause 6(1)(b) of Regulation 708 or section 28.1 of the *Law Society Act*.
- B.1.2.2. At its meeting on September 9, 1993, the Admissions Committee considered the similarities and differences between an application for temporary admission made under clause 6(1)(b) and an application for temporary admission made under section 28.1. The Committee recommended that clause 6(1)(b) be revoked.
- B.1.2.3. On September 24, 1993, Convocation adopted the recommendation of the Admissions Committee that clause 6(1)(b) be revoked.

B.1.2.4. The revocation of clause 6(1)(b) of Regulation 708 will leave the remainder of section 6 as the provision which governs admissions for occasional court appearances in specific proceedings.

B.1.2.5. Section 6 is comparable to section 28.1 of the *Law Society Act*.

B.1.2.6. Section 6 of Regulation 708 is set out in the left hand column above.

B.1.2.7. Section 28.1 of the *Law Society Act* reads:

- 28.1 (1) On the request of the Attorney General, a person who is of good character and who is qualified to practise law outside Ontario may be admitted by Convocation as a temporary member of the Society for a specified period.
- (2) A person need not be a Canadian citizen or a permanent resident of Canada to be admitted as a temporary member of the Society.
- (3) For the period specified under subsection (1), a temporary member of the Society who has taken the oath or given the affirmation prescribed for temporary members by the rules shall be deemed to be called to the bar and admitted and enrolled as a solicitor and is entitled to act and practise as a barrister and solicitor in the employ of the Attorney General of Ontario or, if appointed under the *Crown Attorneys Act*, as a Crown Attorney or as an assistant Crown Attorney.
- (4) A person admitted as a temporary member of the Society for a specified period ceases to be member at the end of the period.

B.1.2.8. Section 6 of the regulation and section 28.1 of the *Act* address different candidates. However, both types of candidate may be said to be seeking temporary admission to the Law Society.

B.1.2.9. An application for temporary admission made under section 6 of the regulation shares fundamental features with an application for temporary admission made under section 28.1 of the *Act*:

- the candidates are subject to the same admission requirements;
- the candidates must take the oaths or give the affirmations prescribed by the rules; and
- the candidates' memberships last only for specified times.

B.1.2.10. An application made under section 6 of the regulation, however, will differ procedurally from an application made under section 28.1 of the *Act*. The differences between the sections are outlined in the table below:

Categories of Differences	S. 6, Reg. 708	S. 28.1, LSA
That for which the candidate applies	Admission to membership in the Law Society <u>and</u> call to bar and admission and enrolment as a solicitor	Admission to membership in the Law Society
Undertakings to be made by candidate respecting the practice of law	Candidate undertakes that, other than in relation to the specific proceeding for which temporary admission sought, he/she will not engage in the practice of law in Ontario	Candidate not required to give undertaking  (Limited right to practise is implied in subsection 28.1(3), making undertaking superfluous)
Consent to accept service by agent who is member of the Law Society	Candidate required to file consent with the Law Society	Candidate not required to file consent
Method whereby candidate's membership is terminated	Candidate deemed to apply to Law Society for permission to resign	Candidate automatically ceases to be member

B.1.2.11. At its meeting on September 9, 1993, the Admissions Committee considered the desirability of amending section 6 so that it would read like section 28.1. In particular, the Committee considered amending section 6 so that

- candidates are admitted to membership in the Law Society, whereupon they are deemed to be called to the bar and admitted and enrolled as solicitors, and
- at the end of the specified period of temporary membership, candidates automatically cease to be members of the Law Society.

B.1.2.12. The Admissions Committee also considered retaining in section 6 the provision respecting the candidate's undertaking not otherwise to engage in the practice of law in Ontario.

B.1.2.13. On September 24, 1993, Convocation adopted the recommendation of the Admissions Committee that section 6 of Regulation 708 be amended so as to bring it in line with section 28.1 of the *Law Society Act*.

B.2. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: RULE 6; RULE 34: AMENDMENT TO PROVIDE EXPRESSLY FOR THE APPOINTMENT OF AUDITOR BY CONVOCATION; FINANCE AND ADMINISTRATION COMMITTEE TO RECOMMEND AUDITOR FOR APPOINTMENT

B.2.1. Recommendations

B.2.1.1. That Rule 6 of the Rules made under subsection 62(1) of the *Law Society Act* be amended as indicated below in the left hand column:

PROPOSED AMENDMENTS (UNDERLINED)

EXPLANATION OF PROPOSED AMENDMENTS

AUDIT

6. (1) The accounts and transactions of the Society shall be examined and certified annually by a public accountant to be appointed by Convocation annually and not later than its regular meeting in November.

The current wording of Rule 6 has been amended by adding, after the word "appointed", the words "by Convocation" and, after the word "annually", the words "and not later than its regular meeting in November". The amended wording has then been transposed into new subrule (1) of Rule 6.

(2) If Convocation fails to appoint a public accountant in any year, the accounts and transactions of the Society shall be examined and certified in that year by the public accountant most recently appointed by Convocation under subrule (1).

This proposed subrule is new. It is intended to provide for the eventuality of Convocation failing to appoint, in any year, a public accountant.

This proposed amendment was not considered by the Research and Planning Committee at its meeting on October 14. The proposal originates with the staff. The wording for the subrule is modelled on the provision of the *Corporations Act* which deals with the appointment of auditors (section 94).

B.2.1.2. That Rule 34 of the Rules made under subsection 62(1) of the *Law Society Act* be amended to provide that the Finance and Administration Committee shall be responsible for recommending a public accountant for appointment by Convocation, pursuant to Rule 6, to examine and certify the accounts and transactions of the Society.

B.2.1.3. That in Rule 34 of the Rules made under subsection 62(1) of the *Law Society Act*, a new subrule (5) be added to read as follows:

(5) The Finance and Administration Committee shall, not later than its regular meeting in November in each year, recommend a public accountant for appointment by Convocation, pursuant to Rule 6, to examine and certify the accounts and transactions of the Society.

B.2.2. Explanation

- B.2.2.1. At present, Rule 6 of the Rules made under subsection 62(1) of the *Law Society Act* provides that "[t]he accounts and transactions of the Society shall be examined and certified annually by a public accountant to be appointed annually". The Rule does not state who is to appoint the public accountant.
- B.2.2.2. At its meeting on October 14, 1993, the Research and Planning Committee considered the report of the Subcommittee on Rules of Procedure for the Annual Meeting. In its report, the Subcommittee raised the issue of whether the annual meeting should appoint the auditor.
- B.2.2.3. The Research and Planning Committee was given to understand that the convention has been for Convocation to appoint the auditor.
- B.2.2.4. The Research and Planning Committee considered the matter of the appointment of the auditor and determined that, as between the annual meeting and Convocation, Convocation, as the governing body of the Law Society, was the more appropriate body to appoint the auditor.
- B.2.2.5. On October 22, 1993, the Research and Planning Committee recommended to Convocation that Rule 6 be amended to provide that the auditor be appointed by Convocation. The recommendation was adopted.
- B.2.2.6. At its meeting on October 14, the Research and Planning Committee did not consider the timing of the appointment of the auditor by Convocation. The staff have proposed that the auditor be appointed not later than the regular meeting of Convocation in November. The proposal has been approved by the staff of the Finance and Administration Department.
- B.2.2.7. At its meeting on October 14, the Research and Planning Committee also did not consider how amended Rule 6 would be put into practice, that is, how Convocation would come to appoint the auditor. The staff were alerted to this problem in the course of preparing the proposal for amendment to Rule 6. The view was then expressed that it would fall to the Finance and Administration Committee to recommend candidates for appointment pursuant to Rule 6. To ensure that there are no gaps in the appointment process, the staff have proposed that Rule 34 be amended so as to include within the mandate of the Finance and Administration Committee the responsibility of recommending candidates for appointment pursuant to Rule 6. It is proposed that the timing of the Committee's recommendation of candidates for appointment pursuant to Rule 6 coincide with the timing of the appointment by Convocation (i.e., not later than the Committee's regular meeting in November). The proposal has been approved by the staff of the Finance and Administration Department.

B.3. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: AMENDMENT OF PARTS OF RULE 50: ANNUAL FEE; CATEGORIES OF MEMBERSHIP; PARENTAL LEAVE AND CHANGE IN STATUS.

B.3.1. Recommendation

B.3.1.1. That in Rule 50 of the Rules made under subsection 62(1) of the Law Society Act, the parts entitled "ANNUAL", "CATEGORIES OF MEMBERSHIP", and "PARENTAL LEAVE AND CHANGE IN STATUS" be revoked and replaced by the wording set out in the right hand column on the following four pages:

CURRENT TEXT

PROPOSED AMENDMENTS (UNDERLINED)

[Explanatory notes on the amendments are found in Attachment D. Superscripted numbers contained in the text correspond to note numbers. They do not form part of the rule.]

ANNUAL

ANNUAL<sup>1</sup>

Unless otherwise exempted every member of the Society shall pay an annual fee, to include a Lawyers Fund for Client Compensation levy, a Legal Aid levy and a County Library levy for each financial year of the Society in an amount to be determined by Convocation. The annual fee shall be due and payable on the 1st day of July in each financial year or, if a member is admitted, readmitted or restored to membership on a date subsequent to the 1st day of July, the annual fee is due and payable on the date on which the member is admitted, readmitted or restored. Student members who are admitted during the financial year in which they complete the Bar Admission Course are not required to pay the annual fee for the financial year in which they are called to the bar and admitted as a Solicitor.

(i) Unless otherwise exempted every member<sup>2</sup> of the Society shall pay an annual fee, to include a Lawyers Fund for Client Compensation levy, a Legal Aid levy and a County Library levy for each financial year of the Society in an amount to be determined by Convocation.

(ii) The annual fee shall be due and payable on July 1<sup>3</sup> in each financial year.

(iii) The annual fee payable by a member admitted, readmitted or restored to membership subsequent to July 1 in any year shall be reduced pro rata, the fee to be calculated on the basis of the number of whole calendar months remaining before the end of the financial year.<sup>4</sup>

(iv) If a member is admitted, readmitted or restored to membership on a date subsequent to July 1, the pro rata annual fee is due and payable on the date on which the member is admitted or readmitted or on the date when the member's membership is restored, as the case may be.<sup>5</sup>

- (v) Student members who are admitted during the financial year in which they complete the three-month teaching term (Phase III) of the Bar Admission Course are not required to pay the annual fee for the financial year in which they are called to the bar and admitted as solicitors.<sup>6</sup>

CURRENT TEXT

CATEGORIES OF MEMBERSHIP

There are 3 categories of fee paying members:-

- (1.1) Members engaged in legal practice in respect of the law of Ontario, whether they do so in Ontario or in some other part of the world, including law teachers who practise and those federal, provincial and municipal government and corporate lawyers and other members who provide legal advice, opinions, or services with respect to Ontario law shall pay  
. . . 100% of the annual fee
- (1.2) Members not engaged in legal practice in respect of the law of Ontario, including those employed in education, government, corporations or any other position who do not provide legal advice, opinions or services shall pay  
. 50% of the annual fee; and
- (1.3) Members who are not gainfully employed in or outside Ontario or who are in full-time attendance at a university, college or educational facility and not practising law shall pay  
. . . 25% of the annual fee.

PROPOSED AMENDMENTS (UNDERLINED)

[Explanatory notes on the amendments are found in Attachment D. Superscripted numbers contained in the text correspond to note numbers. They do not form part of the rule.]

CATEGORIES OF MEMBERSHIP<sup>7</sup>

There are 3 categories of fee paying members:

- Category 1.1: Members engaged in legal practice in respect of the law of Ontario, whether they do so in Ontario or in some other part of the world, including law teachers who practise and those federal, provincial and municipal government and corporate lawyers and other members who provide legal advice, opinions, or services with respect to Ontario law shall pay  
. . . . 100% of the annual fee.
- Category 1.2: Members not engaged in legal practice in respect of the law of Ontario, including those employed in education, government, corporations or any other position who do not provide legal advice, opinions or services shall pay  
. . 50% of the annual fee. ~~and~~
- Category 1.3: Members who are not employed in or outside Ontario or who are in full-time attendance at a university, college or educational facility and not practising law shall pay  
. . . . . 25% of the annual fee.<sup>8</sup>

CURRENT TEXT

PARENTAL LEAVE AND CHANGE IN  
STATUS

- (i) For the purposes of determining fees, leave from employment or practice for reasons of maternity, paternity or adoption should be treated identically.
- (ii) Members in Categories 1.1 and 1.2 taking such leave shall be entitled to a pro rata reduction in annual fees to the Category 1.3 level for the period of time, in months, that such leave is taken.
- (iii) Members already in Category 1.3 (i.e. unemployed) shall not be entitled to any additional reduction in annual fees.
- (iv) Members in Categories 1.1 and 1.2 who cease practising or become unemployed shall be entitled to a pro rata reduction in annual fees to the Category 1.2 or 1.3 level, as appropriate, for such period as the change in status continues.
- (v) Correspondingly, members in Categories 1.2 and 1.3 who commence practising or become employed must pay a pro rata increase in annual fees to the Category 1.1. or 1.2 level, as appropriate, for such period as the change in status continue

PROPOSED AMENDMENTS (UNDERLINED)

[Explanatory notes on the amendments are found in Attachment D. Superscripted numbers contained in the text correspond to note numbers. They do not form part of the rule.]

PARENTAL LEAVE AND CHANGE IN  
STATUS<sup>9</sup>

For the purposes of paragraphs (ii), (iii), (iv), and (vi) below, "reduction in annual fees" includes, where appropriate, a partial refund of annual fees.

- (i) For the purposes of determining fees, parental leave from employment or practice will be treated identically, whether it is taken for reasons of maternity, paternity or adoption.
- (ii) Members in Categories 1.1 and 1.2 taking parental<sup>10</sup> leave shall be entitled to a pro rata reduction in annual fees to the Category 1.3 level for the period of time, in months, that such leave is taken.
- (iii) Members already in Category 1.3 (i.e. not employed<sup>11</sup>) shall not be entitled to any additional reduction in annual fees.
- (iv) Members in Categories 1.1 and 1.2 who cease practising or cease to be employed<sup>11</sup> shall be entitled to a pro rata reduction in annual fees to the Category 1.2 or 1.3 level, as appropriate, for such period as the change in status continues. The pro rata reduction shall be effective from the first day of the calendar month immediately following the change in status.<sup>12</sup>
- (v) Members in Categories 1.2 and 1.3 who commence practising or become employed must pay a pro rata increase in annual fees to the Category 1.1. or 1.2 level, as appropriate, for such period as the change in status continues. The pro rata increase shall be effective from the first day of the calendar month in which the change of status occurs.<sup>13, 14</sup>

(vi) Members who wish to take advantage of this policy to obtain a reduction in annual fees must apply in writing to the Admissions and Membership Office of the Society.

(vi) Members who wish to take advantage of this policy to obtain a reduction in annual fees must apply in writing to the Admissions and Membership Office of the Society.

B.3.2. Explanation

B.3.2.1. On October 22, 1993, Convocation adopted a recommendation from the Finance and Administration Committee that amendments be made to the parts of Rule 50 that deal with annual fee, categories of membership, and parental leave and change in status.

B.3.2.2. The recommendation of the Finance and Administration Committee was based upon specific proposals for amendments to those parts of Rule 50, which the Committee considered at its meeting on October 14, 1993.

B.3.2.3. The specific proposals call for amendments to Rule 50 to implement various policy decisions previously taken by Convocation, and to give authority for various administrative practices followed by the Society. The specific proposals also call for minor changes to be made to the wording of Rule 50, in the interest of clarity and accuracy.

B.4. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: RULE 50: AMENDMENT OF PART OF RULE 50 ENTITLED "TRANSFER MEMBERS"

B.4.1. Recommendation

B.4.1.1. That in Rule 50 of the Rules made under subsection 62(1) of the Law Society Act, the part entitled "TRANSFER MEMBERS" be amended to read:

TRANSFER MEMBERS

Upon filing an application for admission under section 4 of Regulation 708 of the Revised Regulations of Ontario, 1990 - Non-refundable Application Fee	\$ 125
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.4.2. Explanation

B.4.2.1. The part of Rule 50 that is entitled "TRANSFER MEMBERS", and deals with fees in relation to admission to membership in the Society by transfer, currently reads:

TRANSFER MEMBERS

Upon filing an application for admission under section 4 of Regulation 708 of the Revised Regulations of Ontario, 1990 — Non-refundable Application Fee .....	\$ 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

B.4.2.2. On October 22, 1993, Convocation adopted a recommendation from the Finance and Administration Committee that the transfer application fee, currently set at \$101, be increased to \$125.

B.5. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: RULE 50: AMENDMENT OF PART OF RULE 50 ENTITLED "MISCELLANEOUS"

B.5.1. Recommendation

B.5.1.1. That in Rule 50 of the Rules made under subsection 62(1) of the Law Society Act, the part entitled "MISCELLANEOUS" be amended to read:

MISCELLANEOUS

Special petitions - name changes .....	\$25
Special petitions - legal education .....	\$50
Certificate of good standing .....	\$50
Transcript of class standing and rating in individual subjects	\$50
<u>Each additional copy of the transcript,</u>	
<u>when requested at the same time as the original copy of the</u>	
<u>transcript</u> .....	\$10
Duplicate diploma .....	\$50
Letter certifying that a member is in good standing .....	\$25
Failure to file a Form 2 or Form 3	
within the time prescribed by the Regulation .....	\$10 per day
for each day of default to a maximum of \$1,500 for each filing	
period	

[Amended text underlined]

B.5.2. Explanation

B.5.2.1. The part of Rule 50 that is entitled "MISCELLANEOUS", and deals with miscellaneous fees, currently reads:

MISCELLANEOUS

Special petitions - name changes .....	\$10
Special petitions - legal education .....	\$25
Certificate of good standing .....	\$25
Transcript of class standing and rating in individual subjects .....	\$25
Additional copies .....	\$ 5
Duplicate diploma .....	\$25
Letter certifying that a member is in good standing .....	\$25
Failure to file a Form 2 or Form 3 within the time prescribed by the Regulation .....	\$10 per day for each day of default to a maximum of .....
	\$1,500 for each filing period

B.5.2.2. On October 22, 1993, Convocation adopted a recommendation from the Finance and Administration Committee that the miscellaneous fees be changed as follows:

FEE	RATES	
	CURRENT	PROPOSED
Special petitions - name change	\$10	\$25
Special petitions - legal education	\$25	\$50
Certificate of good standing	\$25	\$50
Transcript of class standing and rating in individual subjects	\$25	\$50
Additional copies	\$ 5	\$10
Duplicate diploma	\$25	\$50

B.6. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: RULE 50: AMENDMENT TO PROVIDE FOR A REINSTATEMENT FEE FOR MEMBERS SUSPENDED PURSUANT TO SECTION 36 OF THE LAW SOCIETY ACT.

B.6.1. Recommendation

B.6.1.1. That in Rule 50 of the Rules made under subsection 62(1) of the *Law Society Act*, immediately after the part which prescribes the "Readmission Fee", the following words be added:

REINSTATEMENT

For reinstatement of the rights and privileges of a member whose rights and privileges have been suspended pursuant to section 36 of the *Law Society Act*, a reinstatement fee is payable by the member in the amount of . . . . . \$150

B.6.1.2. That in Rule 50 of the Rules made under subsection 62(1) of the *Law Society Act*, the part entitled "REINSTATEMENT" not come into effect until January 1, 1994.

B.6.2. Explanation

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- B.6.2.1. On February 11, 1993, the Policy Section of the Discipline Committee recommended a Reinstatement Fee for members suspended "for administrative reasons" (non-payment of an annual fee, an insurance levy or a late filing fee). Also on February 11, 1993, the Finance and Administration Committee adopted a new policy concerning "Suspended Members" which proposed the introduction of a Reinstatement Fee.
- B.6.2.2. In its report to Convocation on October 22, 1993, the Finance and Administration Committee recommended that the Reinstatement Fee be set at \$150.
- B.6.2.3. On October 22, 1993, Convocation adopted the recommendation of the Committee subject to the following provision: that the Reinstatement Fee not come into effect until January 1, 1994.

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C.  
INFORMATION

No items to report

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

M. Cullity  
Chair

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

- Item A. - A.1.3. - Discussion papers on re: The Peripatetic Bencher and Regional Election of Benchers.  
(Attachments A - A-4 & B - B-7)
- Item B. - B.1. - Notes on Proposed Text for Section 6 of Regulation 708.  
(Attachment C - C-3)
- Item B. - B.2. - Notes on Proposed Amendments to Rule 50.  
(Attachment D - D-2)

It was moved by Mr. Cullity, seconded by Mr. Lerner that there always be a regionally elected Bencher in a region.

Lost

Mr. Arnup did not participate.

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

LEGAL AID COMMITTEE

Meeting of November 11, 1993

Ms. Kiteley presented Item 1.-1.1 re: Family Law Pilot Project for Convocation's approval.

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 November, 1993, the following members being present: Fran Kiteley (Chair), Paul Copeland (Vice Chair), James Bond, Judy Campbell, Steve Cooney, Carole Curtis, Bruce Durno, Michelle Fuerst, Kathy Kehoe, Michael Koenig, Randall LaLande and Dennis Petiquan.

At this meeting on November 4, 1993, the Attorney General attended with the following members from the Ministry: George Thomson (Deputy Attorney General), Doug Ewart, Steve Foulds, Michael Melling, Mark Leach and Lori Newton.

Your Committee also met on Thursday, November 11, 1993, the following members being present: Fran Kiteley (Chair), Paul Copeland (Vice Chair), Bruce Ally, James Bond, Lloyd Brennan (Vice Chair), Steve Cooney, July Campbell, Paul Copeland, Carole Curtis, Bruce Durno, Michelle Fuerst, Kathy Kehoe, Michael Koenig, Dennis Lalande, and by telephone, Dennis Petiquan.

At the meetings on November 4 and 11, 1993, the following senior members of staff were present: Bob Holden (Provincial Director), Ruth Lawson (Deputy Director - Appeals), George Biggar (Deputy Director - Legal) and Bob Rowe (Deputy Director - Finance).

A.  
POLICY

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1.1 FAMILY LAW PILOT PROJECT

At Convocation in May 1992, the Legal Aid Committee and the Clinic Funding Committee were urged to explore with the Deputy Attorney General means by which family law might be delivered other than through the certificate system. As a result, the Pilot Project Steering Committee was created (Phil Epstein, Joana Kuras, Bob Holden, Fran Kiteley on behalf of the Law Society, the Legal Aid Committee and the Clinic Funding Committee: and four representatives including the Deputy Attorney General on behalf of the Ministry). The Pilot Project Steering Committee created the Pilot Project Design Committee.

Members of the Design Committee included representatives of Clinics, Legal Aid, shelters, consumers, visible minority women, the private bar and the Attorney General. All were well regarded and well known in the subject of delivery of legal services in family law.

The Design Committee (chaired by George Biggar, Deputy Director - Legal, Ontario Legal Aid Plan and Carmen Rogers, Ministry of the Attorney General) met extensively over the winter/spring of 1992/93. A report was prepared by the Pilot Project Design Committee. The Report is found at Schedule A.

BENCHERS SHOULD READ THE REPORT IN ITS ENTIRETY.

Technically, the Report was prepared for the Pilot Project Steering Committee. However, the Report was presented to and considered by the Legal Aid Committee and the Clinic Funding Committee in order that those Committees would provide feedback to Bob Holden, Fran Kiteley, Joana Kuras and Phil Epstein to assist them as members of the Pilot Project Steering Committee.

At the Legal Aid Committee meeting in June 1993, considerable attention was focused on the Report. The key issues in the Report are:

- (a) The recommendation that a fully integrated family law service be provided in Toronto to eligible women (the Women's Family Law Centre).
- (b) The recommendation that a Pilot Project be designed to provide service in the paper-intensive non controversial areas of uncontested divorces and adoptions (the Limited Service Model).

- (c) The recommendation against a staff office which would provide only those strictly legal services currently authorized by legal aid certificates (this is referred to as the Third Model or the Judicare Equivalent Model)

In June 1993, all members of the Legal Aid Committee expressed interest in and enthusiasm for the report while some registered concern that the Women's Family Law Centre would offer a service only to women. Furthermore, the existing Law Society Rules of Professional Conduct prohibiting discrimination appeared potentially to be in conflict with the concept of a Women's Family Law Centre which would not serve men. The revisions to the Rules of Professional Conduct enable initiatives such as the Women's Family Law Centre but those revisions were only at the draft stage in June 1993.

Due to the lengthy formal agenda at the June meeting and the appearance of potential consensus, the Chair chose to defer the formality of proving the formal resolution in the expectation that it might be accomplished by draft circulated and approved by facsimile transmission prior to Convocation in June.

Between Committee Day and Convocation the Pilot Project Steering Committee met. The Deputy Attorney General received the Report of the Pilot Project Design Committee and gave a preliminary response as follows:

- (a) The Ministry of the Attorney General was still interested in the third model although it had been rejected by the Pilot Project Committee.
- (b) The Deputy Attorney General wanted to explore with Treasury Board the feasibility of implementing the Report with and without the third model.

As a result, the Pilot Project Steering Committee did not conclude its deliberations on the Report of the Pilot Project Design Committee. The Deputy Attorney General asked that consideration be deferred by Convocation until the Deputy Attorney General had had an opportunity to canvass financing options with Treasury Board.

The members of the Pilot Project Steering Committee agreed to defer. Accordingly, the Report of the Pilot Project Design Committee was provided to Convocation in June 1993 for information purposes, but no action was taken by Convocation. As a result of the request by the Deputy Attorney General it was not necessary to circulate a resolution of the Legal Aid Committee for approval by members.

By letter dated October 12, 1993, the Deputy Attorney General reported on the perspective of the Attorney General "in light of decisions taken at Treasury Board and Cabinet". A copy of that letter is attached as Schedule B. The letter reports as follows:

- (a) approval of the Women's Law Centre outside Toronto;
- (b) approval of the Limited Service Model;

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- (c) in the interests of evaluating the staff model with the present *judicare* model, a *judicare* equivalent pilot project should be tested notwithstanding rejection of this "third model" by the Design Committee.

In his letter, the Deputy Attorney General referred to the interest taken by the Attorney General in this issue and her personal experience in the delivery of services to women.

This letter was received by the Legal Aid Committee at its meeting in October. The Legal Aid Committee concluded that it would be helpful if the Attorney General and Deputy Attorney General could attend a meeting of the Legal Aid Committee to give the Committee the benefit of her views and to facilitate an exchange of views.

A special meeting of the Legal Aid Committee was held on November 4, 1993. The Committee met before the Attorney General arrived and after she departed. The Attorney General was able to join the Committee for over an hour along with George Thomson, Doug Ewart, Steve Foulds, Michael Melling, Mark Leach and Lori Newton. At the conclusion of this meeting, the Legal Aid Committee adjourned to its regular Committee Day meeting to deliberate and decide.

On November 11, 1993, the Legal Aid Committee met for 3 1/2 hours, most of which was devoted to this topic. Many differing views were expressed in the course of an extensive discussion. The differences between the Report and the views of the Attorney General are summarized in a chart, a copy of which is attached as Schedule C. It will facilitate consideration by Benchers to refer to this chart. Schedule C, Part A reflects the report and schedule C, Part B reflects the Attorney General's views.

The differences are these:

- the Report recommends a Women's Law Centre in Toronto
- the Attorney General asserts that the Women's Law Centre should be established in an urban area outside Toronto
- the Report recommends against a third model pilot project
- the Attorney General advocates a third model pilot project for evaluation purposes

Without reporting verbatim and at the risk of not recognizing valuable comments, the following issues were canvassed:

- (a) The Attorney General and her staff argued in favour of a third model on several grounds including the fact that the cost of Legal Aid per capita is considerably higher in Ontario than in any other jurisdiction in Canada; and accordingly, efforts should be made to experiment with alternate methods of quality service which would evaluate the prospect of a more cost-efficient service.
- There is considerable criticism of the cost per capita approach and a real possibility that the costs reported by the Federal Government are not accurate nor comparable between vastly different jurisdictions.
- (b) The Attorney General left a clear impression that a lack of co-operation by the Legal Aid Committee would result in negative implications in the consideration by Treasury Board of the Legal Aid Committee budget for the current and next fiscal years.
- The members of the Legal Aid Committee expressed grave concerns about the prospects of budgetary manipulation over an issue of principle in the delivery method.
- (c) The Attorney General did not indicate that if the Legal Aid Committee declined to endorse the "third model" that the Attorney General would proceed in any event.
- To the extent that such a course of action may be open to the Attorney General, some members expressed concern that it is more advantageous to the public for the Legal Aid Committee to have approved the "third model" so as to ensure its implementation in the manner most likely to benefit the public; to ensure that the components the Legal Aid Committee feels are appropriate are included; to ensure that the evaluation is comprehensive and balanced.
- (d) The members of the Design Committee (see the membership list in the Report) applied their considerable skills with "expertise in advocacy and experience on the front lines of client services" (see third page of Schedule B).
- Why would such individuals ever participate in similar collaborative efforts at the request of the Legal Aid Committee or indeed the Law Society knowing that in the future their views had been disregarded on two significant points?
- (e) The prospect that Treasury Board and Cabinet might proceed only with the Women's Law Centre if the "third model" was also implemented.
- Did the Legal Aid Committee want to risk losing what some members consider the desirable Women's Law Centre by not approving the "third model"?

- (f) The Legal Aid Committee or related committees have, on four previous occasions, rejected a pilot project based on the "third model" (the Subcommittee on the Delivery of Legal Aid in Family Law - 1989; the Family Law Tariff Report - 1992; the Design Committee Report itself; the Legal Aid Committee in June 1993 when it first considered this Report.
- Given such extensive consideration of the issue by qualified and informed people, why would the Legal Aid Committee now consider a serious departure from its previous position?
- (g) Funding for family law legal aid is and has been inadequate. This inadequacy and under-funding has led to systemic discrimination against women in the Legal Aid Plan.
- Did the Committee want to further experiment with those individuals (in family law 70% are women) particularly when there is no immediate prospect of experimenting in criminal legal aid (where certificate recipients are overwhelmingly male)?
- (h) The process has been unsatisfactory: the Design Committee was delegated to the task; the Design Committee reported and that report was brought to the Legal Aid Committee and the Legal Aid Committee approved the report; the Deputy Attorney General asked for deferral by Convocation pending Treasury Board input; Treasury Board and the Attorney General differ with the Design Committee; the Legal Aid Committee is asked to consider.
- Whatever the outcome, the Attorney General and her staff should be made aware that this is an inappropriate method of addressing an issue of importance principle.
- (i) The Legal Aid Plan should be adaptable to change. History reflects a record of adaptability. In 1979 the government was anxious to put public defender into place in Ontario. At that time, the Legal Aid Committee had lengthy negotiations with the government to see if there was some way to protect the judicare system but see if there were some things the government wanted that Legal Aid could undertake and control. The Legal Aid Committee went forward with the staff duty counsel program in downtown Toronto. Those involved in the criminal courts at the time were concerned that the staff duty counsel program meant the end of judicare. However, the Legal Aid Plan has been able to control that initiative and ensure that staff duty counsel has become an important component of delivery in criminal law matters. The second initiative was the Research Facility. The Legal Aid Plan controls the Research Facility and has made it a success. The third initiative was the mentor hot-line. The fourth initiative was the Ottawa social worker program. For three years, the Legal Aid Plan looked at that pilot project concluded it was not working and was too expensive; and ended the pilot project.

- Judicare has to be flexible. The preferable route is to control the process of change by being not only part of it, but in a leadership role.

At the conclusion of this extensive discussion, the Legal Aid Committee voted on various issues in the following order:

Limited Service Model

In favour	10
Opposed	2
Abstain	1

Women's Family Law Centre in Toronto

In favour	12
Opposed	0
Abstain	1

Members were not constrained by the position each had taken on "Toronto" when the vote on "outside Toronto" was recorded.

Women's Family Law Centre outside Toronto

In favour	8
Opposed	4
Abstain	1

Third Model/Judicare Equivalent

In favour	6
Opposed	5
Abstain	1

All of the foregoing being subject to the planning, administration and evaluation criteria in the Design Committee Report to the extent applicable.

Before leaving this matter, some members of the Committee expressed a concern that with the introduction of the Women's Family Law Centre, steps should be taken to ensure that equivalent services be available in the community (not necessarily in the same facility) which would provide similar services to men. Discussion reflected on whether or how this concern should be expressed. The following resolution was presented:

"The Legal Aid Committee recommends that adequate social services be available in the community to men and women, albeit in separate facilities".

In favour	8
Opposed	3
Abstain	1
Departed	1

Note: Motions, see pages 278 - 280

1.2 FEDERATION OF LAW SOCIETIES - STATEMENT OF PRINCIPLES

The Federation of Law Societies of Canada has a Legal Aid Committee which has met on a number of occasions during the past six months. The Committee has developed a Statement of Principles and wishes to have it approved by each Canadian Law Society and each Legal Aid Plan. Bob Holden is Ontario's representative on the Committee. The Statement of Principles which is attached as Schedule D was adopted by the Legal Aid Committee and was forwarded to Convocation in October 1993. Due to time constraints, Convocation deferred a decision to the November Convocation.

Item deferred

B.  
ADMINISTRATION

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2.1 STUDENT REPRESENTATIVE - LEGAL AID COMMITTEE

The curriculum vitae for Steve Cooney (the new Student Representative on the Legal Aid Committee) is attached hereto and marked as Schedule E.

2.2 ONTARIO LEGAL AID PLAN - STATEMENT OF RECEIPTS AND DISBURSEMENTS FOR THE SIX MONTHS ENDED SEPTEMBER 1993

The Statement of Receipts and Disbursements for Six Months ended September 30, 1993 is attached hereto and marked as Schedule F.

2.3 AREA COMMITTEES - APPOINTMENTS

Hastings and Prince Edward County

Tom Vincent, solicitor  
Donna Ford, solicitor

York County

Carey A. McKay, solicitor

York Region

Warren G. Skinner, solicitor

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

"F. Kiteley"  
Chair

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

- Item A - 1.1 - Report of the Family Law Pilot Project Design Committee.  
(Schedule A, pages 9 - 57)
- Item A - 1.1 - Letter from Mr. George Thomson, Deputy Attorney General to Ms. Fran Kiteley, Chair, Legal Aid Committee dated October 12, 1993.  
(Schedule B, pages 58 - 60)
- Item A - 1.1 - Projects Proposed by the Design Committee.  
(Schedule C, page 61)
- Item A - 1.2 - Proposal for the Directors of the Federation of Law Societies of Canada.  
(Schedule D, pages 62 - 63)
- Item B - 2.1 - Curriculum Vitae of Steve Cooney.  
(Schedule E, pages 64 - 66)
- Item B - 2.2 - Statement of Receipts and Disbursements for Six Months ended September 30, 1993.  
(Schedule F, pages 67 - 68)

It was moved by Ms. Kiteley, seconded by Mr. Copeland that Item A. - 1.1 be adopted.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:50 P.M.

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The Treasurer and Benchers had as their guests for luncheon Mr. William Sewell, a a life member of the Law Society, his wife Helen and his son John.

.....

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Arnup, Bastedo, Bellamy, Brennan, Campbell, Carter, R. Cass, Copeland, Curtis, Epstein, Farquharson, Finkelstein, Goudge, Graham, Hill, Kiteley, Krishna, Lamont, Lax, Lawrence, Legge, Lerner, Levy, McKinnon, Manes, Mohideen, Moliner, Murray, O'Brien, Palmer, Pepper, Peters, Richardson, Ruby, Scott, Sealy, Strosberg, Thom, Topp, Wardlaw and Weaver.

.....

LEGAL EDUCATION COMMITTEE

Meeting of November 26, 1993

Mr. Epstein reported on the meeting of the Legal Education Committee held at noon regarding three proposed exceptions to the Requirements for Standing for Phase Three 1993.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Friday, the 26th of November, 1993, at 12:30 p.m.

The following members were in attendance: Philip Epstein (Chair), Donald Lamont (Vice-chair), Lloyd Brennan, Joan Lax, and Laura Legge, together with Alan Treleaven.

A.  
POLICY

A.1 EXCEPTIONS TO PHASE THREE 1993 REQUIREMENTS FOR STANDING

A.1.1 The Committee discussed three proposed exceptions to the Requirements for Standing and makes the following recommendations.

A.1.2 Recommendations: The Legal Education Committee recommends, for the Phase Three 1993 Bar Admission Course, that the following exceptions be made to the Requirements for Standing:

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- i) That a student who receives an overall Fail in the Professional Responsibility and Practice Management examination not be thereby disentitled to a Conditional Fail in other examinations, and that any prior Conditional Fail not convert to a Fail.
- ii) That the Criminal Procedure Head of Section be permitted to average the total of the student's grades on two designated parts of the Criminal Procedure examination and to grant a Passing grade on each of those two parts where the averaging raises the grade in each to at least the prescribed passing level (10/15). (Information note: The third part, which includes the bail questions, will continue to be graded separately.)
- iii) That a student who is required to write a supplemental examination in Business Law, but has failed only one of the three parts, be required to write a supplemental examination only in that part, and that the writing of the single supplemental examination part be deemed to count as one of the permitted maximum of three supplemental examinations. (Information note: The three parts are corporate, taxation, and insolvency.)

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

P. Epstein  
Chair

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

Carried

.....

AGENDA - COMMITTEE REPORTS AND SPECIFIC ITEMS REQUIRING CONVOCATION'S CONSIDERATION AND APPROVAL

LEGAL AID COMMITTEE (cont'd)

The Kiteley/Copeland motion was not put.

MOTION - Should there be a Women's Family Law Centre?

ROLL-CALL VOTE

Arnup	Against
Bastedo	For
Bellamy	Abstain
Brennan	For
Campbell	Abstain
Carter	Against
Curtis	For
Epstein	For
Finkelstein	Against
Goudge	For
Graham	For
Hill	Abstain
Kiteley	For
Krishna	Against
Lamont	Against
Lax	For
Legge	Against
Lerner	Against
Levy	Against
McKinnon	Against
Manes	Against
Mohideen	For
Moliner	Abstain
Murray	Against
Palmer	For
Peters	Against
Richardson	For
Ruby	Against
Scott	Against
Sealy	Against
Strosberg	Against
Thom	Against
Topp	Against
Wardlaw	For
Weaver	Against

Lost

Motion - Should there be a Pilot Project to provide limited services both to men and women for uncontested matters?

ROLL-CALL VOTE

Arnup	For
Bastedo	For
Bellamy	Abstain
Brennan	For
Campbell	For
Carter	Against
Curtis	Against
Epstein	For
Finkelstein	For
Goudge	For
Graham	For
Hill	Abstain
Kiteley	For
Krishna	Against
Lamont	Abstain
Lax	For
Legge	For
Lerner	For
Levy	For
McKinnon	For
Manes	For
Mohideen	For
Moliner	Abstain
Murray	For
Palmer	For
Peters	Against
Richardson	Against
Ruby	Against
Scott	For
Sealy	For
Strosberg	Against
Thom	For
Topp	Against
Wardlaw	Against
Weaver	Against

Carried

Motion - Should there be a Judicare Equivalent Model for both men and women offering legal services currently provided by the Certificate program?

ROLL-CALL VOTE

Arnup	Abstain
Bastedo	For
Bellamy	Abstain
Brennan	For
Campbell	For
Carter	Against
Curtis	Against
Epstein	For
Finkelstein	For
Goudge	For
Graham	For
Hill	Abstain
Kiteley	For
Krishna	For
Lamont	For
Lax	For
Legge	For
Lerner	Against
Levy	For
McKinnon	For
Manes	For
Mohideen	For
Moliner	Abstain
Murray	For
Palmer	For
Peters	Against
Richardson	Against
Ruby	Against
Scott	For
Sealy	For
Strosberg	For
Thom	For
Topp	Against
Wardlaw	For
Weaver	For

Carried

It was moved by Mr. Bastedo, seconded by Mr. Lerner that the government be requested to allocate the \$665,000 to other similar services in delivery of family law legal services.

Carried

Item A - 1.1 re: Federation of Law Societies - Statement of Principles was deferred to January 1994.

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

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FINANCE AND ADMINISTRATION COMMITTEE

Meeting of November 11, 1993

Mr. Wardlaw presented Items B.-5. and 6. re: Suspensions for Convocation's approval.

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 11th of November, 1993 at 10:30 a.m. in the morning, the following members being present: M. Somerville (Vice Chair in the Chair), J.J. Wardlaw (Vice Chair), T.G. Bastedo, D. Bellamy, R.W. Cass, S.C. Hill, V. Krishna, R.D. Manes, and P.B.C. Pepper. Also in attendance were D.A. Crosbie, D.E. Crack and D.N. Carey.

B.  
ADMINISTRATION

1. FINANCIAL REPORT

The Director presented a highlights memorandum for the General Fund and the Lawyers' Fund for Client Compensation for the four months ended October 31, 1993.

Approved

2. FINANCE AND ADMINISTRATION BUDGET SUBCOMMITTEE

Marc Somerville (Chair), Ron Manes and Mary Weaver were appointed members of the Budget Subcommittee to review and assess the budgets of the Finance and Administration Department and prepare a report for the Priorities and Planning Committee.

Approved

3. PRIORITIES AND PLANNING COMMITTEE - UPDATE

Tom Bastedo, Chair of the Priorities and Planning Committee, briefed the Committee on progress to date.

Noted

4. GENERAL INSURANCE RENEWAL

H.B. Bennett Insurance Brokers have provided renewal pricing for the Society's general insurance coverage for the year commencing October 1, 1994.

Two years ago, the Society obtained competitive quotes from two brokers on its insurance program and each year since, the program has been reviewed by H.B. Bennett & Company, the current insurance broker, for adequacy of coverage and competitive rates. The history of the insurance for the past three years is set out in the table below.

	1991/1992		1992/1993	1993/1994
	FORMER BROKER QUOTE	NEW BROKER ACTUAL	ACTUAL	QUOTE
Property	\$79,210.00	\$40,050.00	\$ 41,265.00	\$ 42,182.00
Boiler	2,126.00	2,126.00	2,232.00	2,412.00
General Liability	7,000.00	7,000.00	7,000.00	6,000.00
Umbrella Liability	1,200.00	750.00	750.00	1,750.00
Crime	2,750.00	2,000.00	2,000.00	2,000.00
Computer	5,177.00	3,700.00	5,850.00	5,850.00
<b>T O T A L</b>	<b>\$97,463.00</b>	<b>\$55,626.00</b>	<b>\$59,097.00</b>	<b>*\$60,194.00</b>

\*In addition, this year insurance premiums are subject to Provincial Sales Tax, a total of \$4,815.52.

Coverage and participation in the program is as follows:

1.	<i>Property</i> (in addition to General Building & contents, at all locations, includes fine arts, library books, valuable papers etc.)	\$91,700,000
	<i>Insurers:</i> Guardian Insurance Company 15% Royal Insurance Company 30% Zurich Insurance Company 55%	
2.	<i>Boiler &amp; Machinery</i> (includes business interruption)	5,000,000
	<i>Insurer:</i> Boiler Inspection and Insurers Company	
3.	<i>Computer</i> (hardware and software)	2,000,000
	<i>Insurers:</i> Guardian Insurance Company	
4.	<i>Primary General Liability, Crime, Tenants Legal Liability, etc.</i> (see note)	5,000,000
	<i>Insurer:</i> Guardian Insurance Company	
5.	<i>Umbrella Liability</i> (in excess of N° 4 above)	5,000,000
	<i>Insurer:</i> Royal Insurance Company	

Note: Last year Primary General Liability was \$3,000,000 and Umbrella coverage \$7,000,000.

The Committee was asked to approve the 1993/94 premiums for payment.

Approved

5. SUSPENSION OF MEMBERS - LATE FILING FEE

The are 5 members who have not complied with the requirements respecting annual filing and have not paid their late filing fee.

In all cases all or part of the late filing fee has been outstanding for four months or more.

The Committee was asked to recommend that the rights and privileges of these members be suspended on November 26, 1993 if the late filing fee remains unpaid on that date.

Approved

Note: Motion, see page 286

6. SUSPENSION OF MEMBERS - N.S.F. CHEQUE

The following members paid their Annual Fees or their Errors and Omissions Insurance levy with cheques which were subsequently dishonoured by the bank.

Roger Paul Trudel	Orleans
Robert Maurice Kernerman	North York
Timothy John Law	Toronto
Steven Jay Carr	Markham
Jerry Allan Lapowich	Thornhill
Heather Anne Campbell Cederqvist	Don Mills

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on November 26, 1993 if the fees or levies remain unpaid on that date.

Approved

Note: Motion, see page 286

7. MEMBERSHIP UNDER RULE 50

(a) Retired Members

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

William Granville Chapin	Toronto
Ronald MacKenzie Coombs	Caistor Centre
Hugh William Kelly	London
Gordon Samuel MacDonald	North York
John Henry Rodd	Mississauga
Roman Orest Sametz	Ottawa
Robert Charles Thomas	Ottawa

(b) Return to Active Practice

Ian Telfer MacDonald of Toronto retired under Rule 50 on September 24, 1993 after reaching the age of sixty-five years. He has informed us of his intention to return to active practice in January 1994.

Sandra Vivienne Bair-Muirhead of Thunder Bay retired under the incapacitated section of Rule 50 on November 22, 1991. She now submits an application for the termination of her retirement and submits medical evidence attesting to her ability to practise law.

Their applications are in order and the Committee is asked to approve them.

Approved

7. RESIGNATION - REGULATION 12

(a) The following members, who have never practised law in Ontario since their call, have applied for permission to resign their membership in the Society and have submitted Declarations/Affidavits in support. These members have requested that they be relieved of publication in the Ontario Reports.

John Wolfenden McClure Edmonton, AB	Called March 31, 1989
Jeffrey Charles Lloyd Wolman New York, NY, USA	Called September 24, 1992
Karen Naomi Young Toronto	Called April 8, 1987
Douglas Murray Stuve Calgary, AB	Called February 9, 1993
Anna Maria Castelo New York, NY, USA	Called February 9, 1993
Maria Francesca Gazzara Calgary, AB	Called April 5, 1979

(b) Grace Tam of Mountain View, California, USA was called to the Bar on March 29, 1989. She practised law in Ontario for approximately 2 1/2 years until October 1991 as in-house counsel. She states she did not handle trust funds or other clients' properties, and all clients' matters were completed and disposed of or arrangements made to the clients' satisfaction. She is not aware of any claims made against her. Her annual filings are up to date.

(c) Mark Charles Newton of Davis, California, USA was called to the Bar on April 15, 1988. He practised as an associate with the firm Fasken Campbell Godfrey from March of 1988 until August of 1991. He declares that he never handled trust funds or other clients' property and arrangements were made to the clients' satisfaction to have their matters turned over to another solicitor at the firm. He is not aware of any claims made against him. His filings are up to date.

Their Declarations/Affidavits are in order and the Committee is asked to approve them.

Approved

C.  
INFORMATION

1. LEGAL MEETINGS AND ENTERTAINMENT

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

- |                   |  |
|-------------------|--|
| November 3, 1993  | Osgoode Law School<br>Convocation Hall |
| November 10, 1993 | County & District<br>Convocation Hall  |
| November 11, 1993 | County & District<br>Convocation Hall  |
| November 17, 1993 | Judges' Dinner<br>Convocation Hall     |
| November 18, 1993 | Lawyers' Club<br>Convocation Hall      |
| November 26, 1993 | Queen's University<br>Convocation Hall |

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

K. Howie  
Chair

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

Item B. - 1. - Memorandum from Mr. David Crack to the Chair and Members of the Finance and Administration Committee dated November 4, 1993 re: Financial Statement Highlights - October 31, 1993 General Fund and Lawyers' Fund for Client Compensation.

(pages 5 - 9)

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

It was moved by Mr. Wardlaw, seconded by Mr. Brennan THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from November 26, 1993 and until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND: N.S.F. CHEQUES - ANNUAL FEES AND ERRORS AND OMISSIONS INSURANCE LEVY

It was moved by Mr. Wardlaw, seconded by Mr. Brennan THAT the rights and privileges of each of the members on the attached list who paid their 1992/93 Annual Fees, 1993/94 Annual Fees, 1992 Errors and Omissions Insurance Levy or 1993 Errors and Omissions Insurance Levy with cheques which were subsequently dishonoured by the bank be suspended from November 26, 1993 and until the necessary fees or levies have been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Meeting of November 11, 1993

Mr. Ruby presented Item A.-1. re: Revisions to Regulation 15 and Forms 4 and 5 for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 11th of November, 1993, at 10:30 a.m. the following members being present: C. Ruby (Chair), S. Lerner (Vice-Chair), D. Batstone, N. Graham, M. Hickey, D. Murphy, S. Thom, R. Wise; D. DiGiuseppe, J. Brooks, S. Hickling, H. Werry and J. Yakimovich also attended.

A.  
POLICY

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1. REVISIONS TO REGULATION 15 AND FORMS 4 AND 5

As a result of the dramatic increase in claims to the Fund during the recession in 1991/1992 (\$33 million in gross claims compared to \$2 million in 1989/1990), the Committee held several special meetings to discuss various means of reducing defalcations by solicitors. It was readily apparent that the majority of problems arose when solicitors were retained to arrange mortgage investments for their clients. One of the problems was a complete lack of documentation to the client by the solicitor with respect to the parameters of the specific investment. The Committee reported to Convocation in March 1992 with two proposals. The first concerned the requirement of completing Forms 4 and 5 and the second concerned the conflict position of a solicitor acting for both a mortgagor and mortgagee in a private mortgage transaction.

Convocation in 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), now 15.2, was subsequently 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. Questions about the forms and the scope of the Regulation were directed to the Audit Department. James Yakimovich, the Director of Audit and Investigations, has had many discussions and correspondence with the profession concerning the forms and the Regulation.

Revisions to the Regulation and the Forms were discussed at the 1993 Spring and Fall Meetings of the County & District Law Presidents' Association. Mr. DiGiuseppe, representative of the C.D.L.P.A., attended the meeting. He advised the Committee that the C.D.L.P.A. at its recent session considered the proposed revisions and approved them on the understanding that the Law Society would continue to monitor their effectiveness.

The Committee and the audit staff now believe that public protection can be achieved while reducing in some respects the burden of complying with the present Regulation and Forms.

IT IS RECOMMENDED that the revisions to Regulation 15.2 and Forms 4 and 5 set out in the enclosed booklet (Tab 7) be approved and referred to the Legislation and Rules Committee for final drafting.

2. ACTING ON BOTH SIDES OF A PRIVATE MORTGAGE

The Committee expressed concern about situations in which a lawyer in a private mortgage situation acts for both the mortgagor and the mortgagee. The Committee was reminded that this issue was being considered by another Committee looking into all types of conflict situations and which had yet to report to Convocation. Convocation in March 1992 referred this aspect of the Special Report on Reducing Defalcations to the Sub-Committee of Professional Conduct looking at conflict situations in general. Your Committee finds this delay unacceptable and recommended that the issue, at least in respect to the mortgage situation, should be dealt with by Convocation within three months.

3. DISPOSITION OF 14 CLAIMS RE SOLICITOR #32

Eighteen claims were made to the Fund in relation to an investment in a syndicated mortgage. The claims are based on identical facts. Four Claimants have received grants from the Fund by way of staff recommendation to the Committee; 14 claims are outstanding. The remaining Claimants are aware of the terms of the four grants which have been made and are requesting that they be treated similarly. It may be that the four claims ought not to have been paid by the Society. But the facts indicate that hearings into the claims may be appropriate to determine the solicitor/client and dishonesty issues.

IT IS RECOMMENDED that the remaining 14 claims with respect to the same syndicated mortgages be dealt with by staff recommendation in the same manner as the previous claims.

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B.  
ADMINISTRATION

No items

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C.  
INFORMATION

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. Copies of the Financial Summary as of October 1993 and a graph showing claims made and outstanding claims is attached. (Pgs. C1 - C3)
3. Accounts approved by the staff in October amounted to \$25,763.85.

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

C. Ruby  
Chair

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

- Item C. - 1. - Referee Reports and Staff Memoranda dated November 11, 1993.  
(Schedule "A", page 3)
- Item C. - 2. - Copies of the Financial Summary as of October 1993 and graph showing claims made and outstanding claims.  
(Marked C1 - C3)

Bound copy of Proposed Amendments to Regulation 708, section 15.2 and Forms 4 and 5.

It was moved by Mr. Ruby, seconded by Ms. Graham that the Revisions be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

DISCIPLINE COMMITTEE

RE: ERNEST ARTHUR DYCK, Toronto

Messrs. Scott, Strosberg, Levy and Wardlaw did not participate.

Ms. Christina Budweth appeared on behalf of the Society and Ms. Janet Leiper appeared on behalf of the solicitor who was present.

The Report of the Discipline Committee together with the Affidavit of Service was filed as Exhibit 1. The Acknowledgement, Declaration and Consent was filed as Exhibit 2.

The Report was amended on page 18, paragraph 26 of the Report by changing the date of November 5th, 1992 to "November 5th, 1991".

It was moved by Mr. Campbell, seconded by Mr. Brennan that the Report as amended be adopted.

Carried

The Committee recommended that the solicitor be suspended for a period of 4 months or be permitted to resign his membership if all of the matters of the Complaint had not been dealt with at the first appearance at Convocation.

Convocation was advised that the solicitor had completed all of the matters in the Complaint.

It was moved by Mr. Campbell, seconded by Mr. McKinnon that the solicitor be suspended for a period of 4 months and thereafter until satisfactory psychiatric evidence be provided that the solicitor was capable of practising law.

Counsel for the Society made submissions urging Convocation impose a longer suspension than recommended by the Committee.

Counsel for the solicitor supported the Committee's recommendation of a 4 month suspension.

Counsel, the solicitor, the reporter and the public withdrew.

The motion made by Mr. Campbell was adopted.

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision.

Ms. Budweth on behalf of the solicitor requested that the suspension commence December 20th, 1993 in order that a number of matters could be finalized.

Counsel, the solicitor, the reporter and the public withdrew.

It was moved by Ms. Lax, seconded by Ms. Kiteley that the period of suspension commence December 20, 1993 and that the solicitor immediately contact the Staff Trustee to assist in the transfer of files.

Carried

26th November, 1993

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision.

The solicitor undertook to co-operate with the Staff Trustee.

Counsel and solicitor retired.

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ORDERS

The following Orders were filed with Convocation.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Ping Kwan Tam,  
of the City of Toronto, a  
Barrister and Solicitor (hereinafter  
referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 26th day of May, 1993, in the presence of Counsel for the Society, and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Ping Kwan Tam be suspended for a period of one month, such suspension to commence the 24th day of September, 1993, and thereafter until such time as all outstanding matters are dealt with.

DATED this 24th day of September, 1993

"Paul S. A. Lamek"  
Treasurer

(SEAL - "The Law Society of Upper Canada")

"Richard F. Tinsley"  
Secretary

Filed

26th November, 1993

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Gregory Peter Linton Vanular, of the Town of Pickering, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 20th day of September, 1993, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Gregory Peter Linton Vanular be disbarred as a Barrister and that his name be struck off the Roll of Solicitors and that his membership in the said Society be cancelled.

DATED this 21st day of October, 1993

"Paul S. A. Lamek"  
Treasurer

(SEAL - "The Law Society of Upper Canada")

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Elyahu Doron Benaiah, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 3rd day of August, 1993, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

26th November, 1993

CONVOCATION HEREBY ORDERS that Elyahu Doron Benaiah be suspended for a period of three months, such suspension to commence the 15th day of November, 1993. At the end of the period of suspension he be permitted to resume practice on the condition that he undertake to comply with the following terms which are to run for three years from the date of his resumption of practice.

1. He is to practice only as the employee or employed associate of a member of the Law Society of Upper Canada, who is in good standing (hereinafter referred to as the "principal"). The principal must accept the responsibility of supervising him during the term of this undertaking.

2. The principal must be acceptable to Senior Counsel - Discipline. Senior Counsel - Discipline may unilaterally refuse to accept any proposed principal on the ground that the Society does not believe that the proposed principal would be a suitable supervisor.

3. He must make full disclosure to the principal of the complaint and decision.

4. The Society will require the principal to sign an acknowledgement confirming that he or she is aware of the terms of this undertaking, and, assume the responsibility to supervise the Solicitor.

5. He must have no authority over or involvement in the trust account of his principal.

6. All clients must be given a written retainer document detailing that all payments for legal fees are to be paid directly to the principal or the principal's firm. Clients on Legal Aid retainers do not need to be given the written retainer.

7. He must not directly receive retainers from clients, whether cash or cheque. He must refer such clients to the principal's bookkeeper or some other member of the firm.

8. He must not sign fee billings on behalf of clients. He can prepare the fee billing, but it is to be executed by the principal or another lawyer with the firm.

In addition, the Solicitor will pay the cost of the investigation of this matter fixed at \$1,500.00.

DATED this 22nd day of September, 1993

"Paul S. A. Lamek"  
Treasurer

(SEAL -"The Law Society of Upper Canada")

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF John Mowat Jaffey, of the City of Mississauga, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 19th day of August, 1993, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that John Mowat Jaffey be reprimanded in Convocation and that he pay costs in the amount of \$3,000.00.

DATED this 22nd day of September, 1993.

"Paul S. A. Lamek"  
Treasurer

(SEAL - "The Law Society of Upper Canada")

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Gerald Oleh Jarson, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 21st day of July, 1993, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

26th November, 1993

CONVOCATION HEREBY ORDERS that Gerald Oleh Jarson be granted permission to resign and that he pay costs in the amount of \$2,000.00.

DATED this 22nd day of September, 1993

"Paul S. A. Lamek"  
Treasurer

(SEAL - "The Law Society of Upper Canada")

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Edward John Freyseng, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 17th day of August, 1993, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Edward John Freyseng be disbarred as a Barrister and that his name be struck off the Roll of Solicitors and that his membership in the said Society be cancelled.

DATED this 22nd day of September, 1993

"Paul S. A. Lamek"  
Treasurer

(SEAL - "The Law Society of Upper Canada")

"Richard F. Tinsley"  
Secretary

Filed

26th November, 1993

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Roger Edgar Bellefeuille, of the City of Alexandria, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 18th day of August, 1993, in the presence of Counsel for the Society, and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Roger Edgar Bellefeuille be suspended for a period of three months, such suspension to commence the 23rd day of September, 1993 and that he pay costs in the amount of \$1,000.00 such costs to be paid within thirty days following Convocation.

DATED this 22nd day of September, 1993

"Paul S. A. Lamek"  
Treasurer

(SEAL - "The Law Society of Upper Canada")

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Peter Michael Hollyoake, of the City of Burlington, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 14th day of May, 1993, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

26th November, 1993

CONVOCATION HEREBY ORDERS that Peter Michael Hollyoake be suspended from practice for one month, the suspension to continue thereafter until:

- (a) the Solicitor provides an accounting and a report to Ms. Hudson on the sale of her property;
- (b) the Solicitor completes his annual filing requirements for the year ends April 30, 1990 and April 30, 1991;
- (c) the Solicitor pay the required late filing fee of \$1,500.00;
- (d) the Solicitor produce his books and records for the audit staff of the Law Society.

DATED this 21st day of October, 1993

"Paul S. A. Lamek"  
Treasurer

(SEAL - "The Law Society of Upper Canada")

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Francis Lewis Reilly, of the City of St. Catharines, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 18th day of August, 1993, in the presence of Counsel for the Society, and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Francis Lewis Reilly be suspended for a period of three months, such suspension to take effect upon the completion of the current suspension and thereafter until such time as the filings are made.

DATED this 22nd day of September, 1993

"Paul S. A. Lamek"  
Treasurer

(SEAL "The Law Society of Upper Canada")

"Richard F. Tinsley"  
Secretary

Filed

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AGENDA - COMMITTEE REPORTS AND SPECIFIC ITEMS REQUIRING CONVOCATION'S CONSIDERATION AND APPROVAL

HERITAGE COMMITTEE

Meeting of November 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The HERITAGE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of November, 1993 at 4:30 p.m., the following members being present: Hickey (Chair), Palmer and Wardlaw. Also present were Binnie, Brunet, Langlois and Traviss.

A.  
POLICY

1. USER FEES

At the May meeting of the Committee the issue of user fees was raised. Susan Binnie, Research Coordinator, has prepared a paper that addresses this issue (numbered 1 - 11).

The Committee discussed the issue of user fees at some length. It was decided that it would be premature to suggest the sort of amounts that should be charged and whether there should be different categories. The Committee asks Convocation to accept in principle the implementation of some sort of user fee for individuals and institutions who use the service of the Archives except with respect to the most basic type of inquiry.

Convocation is asked to approve in principle the implementation of user fees.

26th November, 1993

If Convocation adopts the recommendation, the Committee will come back with a scale of fees that would be charged.

Item deferred

2. CARE AND MAINTENANCE OF THE  
LAW SOCIETY'S ART COLLECTION

Elise Brunet, the Curator, prepared a paper entitled "Proposed Fine Art Collection Management Plan" (numbered 12 - 23). As Ms. Brunet has noted, the plan's implementation will depend on what financial resources are available.

The Committee adopted the plan, and in recommending that Convocation do so as well, recognized that the degree of implementation is conditional upon the availability of funds.

The Committee asks Convocation to adopt the plan.

B.  
ADMINISTRATION

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1. PRIORITIES AND PLANNING PROCESS

The Committee's Chair will be meeting with the Archives staff to review the existing budget and the plans for 1994-1995.

C.  
INFORMATION

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1. WORK OF THE ARCHIVES DEPARTMENT

Ann-Marie Langlois, the Archives Manager, presented an oral report on the work of the Archives Department and a written report on priorities and planning, 1994-1998 which is attached (numbered 24 - 31).

2. THE BICENTENNIAL IN 1997

The Chair of the Bicentennial Committee reported on plans that were to be prepared in the near future to mark the Bicentennial in 1997. They will be in addition to the written history project that Convocation approved in September this year.

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

M. Hickey  
Chair

26th November, 1993

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

- Item A. - 1. - The Law Society of Upper Canada Archives Proposal on Reference Service User Fees. (pages 1 - 11)
- Item A. - 2. - Paper on the Proposed Fine Art Collection Management Plan. (pages 12 - 23)
- Item C. - 1. - Written Report on priorities and planning 1994 - 1998. (pages 24 - 31)

Item A.-1. re: User Fees, was deferred to the January Convocation.

THE REPORT WITH THE EXCEPTION OF ITEM A.-1. WAS ADOPTED

INSURANCE COMMITTEE

Meeting of November 18, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 18th of November, 1993 at 7:00 in the evening, the following members being present: Messrs. Finkelstein (Chair), Campbell, Cass, Epstein, Feinstein, McKinnon, Murray, Wardlaw and Ms. Elliott.

In attendance on behalf of the Finance Committee were Messrs. Krishna, Pepper and Ms. Weaver.

Also in attendance were Messrs. Crosbie, Whitman, Whiklo, Tinsley, Crack, Carey, O'Toole and Ms. Wishart.

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ITEM

1. 1994 ERRORS & OMISSIONS OPERATING BUDGET

The 1994 E&O Department budget, tabled at the meeting, was unanimously approved by your Committee and has been referred to the Special Committee on Priorities & Planning for review. See Appendix "A".

26th November, 1993

2. 1994 ERRORS & OMISSIONS LEVY

Subject to considering the effects of applying the member's deductible to claim related expenses and/or reducing the LPIC policy limit to \$500,000, the Director's report and recommendations on the 1994 E&O levy requirements, tabled before a joint meeting of the Insurance and Finance Committees, are supported by both Committees. Details of the 1994 E&O levy requirements are contained in Appendix "B". The effects of introducing such a deductible and/or restricting the LPIC policy limit, which were not available at the meeting, are contained in Appendix "C".

Item deferred

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

C. Campbell  
Chair

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

- Item 1. - Copy of the Errors and Omissions Budget 1994.  
(Schedule A, pages 1 - 2)
- Item 2. - Report re: Introduction to 1994 Work-up.  
(Schedule B, pages 1 - 10)
- Item 2. - Report on the effects of introducing deductible and/or  
restricting LPIC policy limit. (Schedule C)

Item 2 re: 1994 Errors & Omissions Levy was deferred to the December Special Convocation.

THE REPORT WITH THE EXCEPTION OF ITEM 2 WAS ADOPTED

PROFESSIONAL CONDUCT COMMITTEE

Meeting of November 11, 1993

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 11th of November, 1993 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Campbell (Vice-Chair), Braid (Non-Bencher), Cullity, Feinstein, Hickey, Moliner, Scott and Sealy.

A.  
POLICY

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1. GENERAL ASSIGNMENT OF ACCOUNTS RECEIVABLE  
BY LAWYER TO THE BANK - LAWYER HAS REFUSED  
TO PROVIDE A LIST OF NAMES OF CLIENTS SO THAT  
GARNISHEE PROCEEDINGS CAN BE COMMENCED -  
LAWYER RELUCTANT TO GIVE THE BANK THE NAMES OF  
THE CLIENTS BECAUSE OF DUTY OF CONFIDENTIALITY

A lawyer made a general assignment of his accounts receivable to the bank who subsequently brought legal proceedings against the lawyer. Counsel for the bank has raised the following concern with the Law Society.

We obtained Judgment on behalf of our client against a lawyer who is a sole practitioner. We conducted an examination in aid of execution and requested that the lawyer provide us with a list of his accounts receivables on a monthly basis, so that we could garnish the monies owing to him. The lawyer refused to provide us with same. Accordingly, we brought a motion for an Order compelling the lawyer to provide us with the list of his accounts receivables on an ongoing basis.

We attended on this motion on Thursday, September 30, 1993, in front of Master Cork. The motion was unopposed, however, Master Cork was reluctant to make such an Order given a lawyer's duty of confidentiality to his client. Providing us with a list of his accounts receivables would obviously reveal the names of his clients. Master Cork adjourned the motion and requested that we inquire of the Law Society its views on the issue.

We did some research on the issue and were unable to find any cases on point. Our position is that to prohibit a creditor from obtaining a list of the debtor's accounts receivables would prevent the creditor from realizing on its Judgment and would be unjust. Furthermore, the purpose of obtaining the names of the lawyer's clients would not be to obtain information regarding the communications between the lawyer and his client, which appears to be the essence of the confidentiality rule. Accordingly, we do not believe that providing a creditor with a list of lawyer's accounts receivables would be breaching his or her duty of confidentiality to the client.

Please provide us with your opinion as soon as possible so that we can proceed on attempting to realize on the Judgment on behalf of our client.

The bank's lawyer had first written to the Complaints Department which then referred the inquiry to the Professional Conduct Department. Counsel for the bank expressed this concern to the Committee's Secretary:

As discussed, the issue is whether we can obtain a list of a lawyer's accounts receivables, in order to garnish the amounts owing to him, on behalf of a judgment creditor.

In the brief conversation which we had, you mentioned that having a lawyer assign his accounts receivables to the creditor without revealing their names would be more appropriate than providing the creditor with a list of the clients' names. The problem we have with this is that in enforcing a Judgment, we do not believe that we have a right to compel the debtor to assign his accounts receivables to the creditor, however, the creditor does have a right to garnish the accounts receivables.

26th November, 1993

Several pages from *Solicitor-Client Privilege in Canadian Law* co-authored by Ronald D. Manes and Michael P. Silver may, according to the bank's lawyer be on point (numbered 1 - 8).

The Law Society has approved of the assignment by lawyers of their accounts receivable in a general form, bearing in mind the need for confidentiality.

The Committee noted that the clients, whose outstanding accounts had been the subject of the assignment, would not have known of the assignment. Moreover, only the clients could waive the confidentiality requirement and not the lawyer.

Rule 4 reads as follows:

The lawyer has a duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, and should not divulge any such information unless expressly or impliedly authorized by the client or required by law to do so.

It stresses the need to protect confidentiality.

Paragraph 3 of the Commentary focuses on the need to safeguard the identity of the client. It reads as follows:

As a general rule, the lawyer should not disclose having been consulted or retained by a particular person about a particular matter unless the nature of the matter requires such disclosure.

The Committee also acknowledged that a lawyer who was ordered to make disclosure by a court or tribunal was protected by paragraph 10 of the Commentary under the same Rule which reads:

When disclosure is required by law or by order of a court of competent jurisdiction, the lawyer should always be careful not to divulge more information than is required.

The Committee recommends to Convocation that the Chair of the Professional Conduct Committee send a letter to Master Cork indicating that the Professional Conduct Committee had discussed the matter thoroughly and was of the opinion that disclosure should be made only if required by order of the court or with clients' knowledge and consent.

The Committee asks Convocation to adopt the position.

The Committee is planning to refer this matter to the working group that is reviewing Rule 4.

Item deferred

2. REQUEST FOR ADVICE - LAWYER WISHES TO KNOW  
IF PROPOSED FEE ARRANGEMENT WOULD CONTRAVENE  
PROVISION IN RULE 9 ON DIVISION OF FEES

A litigation lawyer with 6 years experience set up his own practice 14 months ago. The lawyer has several unused hours each day.

He has invited a small law firm at different premises to consider retaining him as their agent for litigation work, for which the lawyer would bill the firm at a rate lower than the rate which his experience and ability would justify. The firm would then bill their clients, but would gross up his fees to the rate which would normally be proper for the lawyer to charge, with the knowledge and consent of the clients.

For example, if the lawyer sent an account for 5 hours at \$75 an hour, the law firm would bill the 5 hours at \$150 an hour. A written acknowledgement would be obtained in advance from the client.

The lawyer suggests the situation would be identical to that involving a salaried associate at a law firm in the following particulars:

- (a) The contract of retainer would be made between the firm and the client. The firm would be responsible to the client for the work and for supervising the lawyer;
- (b) The firm would decide what work, if any, the client required and would issue the appropriate original instructions to the lawyer;
- (c) A contract to perform the work, and a duty of care to do so properly, would exist between the firm and the lawyer (which duty might indeed go further than applies between a firm and salaried associate); the lawyer would be a fiduciary of both the firm and the client;
- (d) Both the lawyer, and members of the firm dealing with the client, would be bound by solicitor-client privilege and all professional obligations applicable between lawyer and client.

Depending upon the Committee's determination, the firm's instructions, and the client's needs, the lawyer might or might not meet the client, alone or with members or employees of the firm present.

Rule 9(b) of the Rules of Professional Conduct reads as follows:

The lawyer shall not:

- (b) divide a fee with another lawyer who is not a partner or associate unless (i) the client consents either expressly or impliedly to the employment of the other lawyer, and (ii) the fees are divided in proportion to the work done and responsibilities assumed;

The lawyer feels the above arrangement would comply with (i) of this Rule.

As for (ii), the Rule clearly proscribes fee splits between the lawyer and a firm which does nothing but refer the client to the lawyer (i.e. is not responsible to the client in any way).

But in a case such as this, where the firm is retained by the client, issues the original instructions to the lawyer, and remains responsible to the client, the lawyer is unsure of the application of (ii). In particular, he is unsure how an appropriate division of the fee is to be calculated, and how the proportion of responsibilities assumed is to be determined.

If this proposal is unacceptable in its current form, the lawyer would like to be informed of any modifications or restrictions which would make it acceptable.

It should be noted that the Committee has had occasion to consider the situation of an employment agency that helps private law firms, corporate law departments and governments by providing lawyers on a temporary basis. The entity that hires the lawyer pays a sum of money to the agency based on the time the temporary lawyer works there. If the lawyer worked 6 hours, the entity would be billed 6 times the hourly rate of say \$125 an hour. The agency would in turn pay that lawyer but it would be less than \$125 an hour. It also took the position that this arrangement did not constitute the improper division of fees. It noted the very positive benefit served by this agency in helping with access to legal services at the same time as providing part-time work for some members of the profession. The Committee also said that the role of this type of agency should be looked at when the Rules of Professional Conduct are rewritten.

The Committee took the position that the proposed arrangement was in order provided that:

- (1) the client consented; and
- (2) the law firm was assuming responsibility for the work done by the contracting lawyer.

The Committee asks Convocation to adopt this position.

Item deferred

B.  
ADMINISTRATION

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1. PRIORITIES AND PLANNING PROCESS FOR 1994-1995

All Committees are looking at their objectives, projects and programs in the context of their importance and their present and future impact on the Society's budget.

The Committee has taken a preliminary look at its existing budget (1993-1994) with this objective in mind and will discuss the matter further at its January meeting.

C.  
INFORMATION

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1. SPECIAL COMMITTEE TO REVIEW THE  
RULES OF PROFESSIONAL CONDUCT

The Chair reported on the progress being made by the Special Committee.

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

The Federation's Committee held its most recent meeting in Toronto on October 23rd.

