

MINUTES OF CONVOCATION

Friday, 22nd October, 1993
9:30 a.m.

PRESENT:

The Treasurer (Paul S. A. Lamek), Bastedo, Bellamy, Brennan, Campbell, Carter, R. Cass, Copeland, Cullity, Curtis, Elliott, Epstein, Feinstein, Goudge, Graham, Hickey, Hill, Howie, Howland, Kiteley, Lamont, Lawrence, Lax, Lerner, Levy, McKinnon, Manes, Mohideen, Moliner, Murphy, Murray, D. O'Connor, Palmer, Pepper, Peters, Ruby, Scott, Sealy, Somerville, Thom and Weaver

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IN PUBLIC

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OPENING REMARKS BY TREASURER

The Treasurer informed Convocation that he had met with Mr. George Thomson the Deputy Attorney General to report on the matters considered at the Special Convocation held on September 23rd. The Treasurer appointed a Special Committee composed of Messrs. Scott and Cullity to meet with the Law Foundation and 2 representatives from the government to deal with the problem of mixed trust accounts.

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DRAFT MINUTES - SEPTEMBER 22, 23 AND 24, 1993

It was moved by Mr. Brennan, seconded by Mr. Lerner that the Draft Minutes for September 22, 23 and 24, 1993 be adopted.

Carried

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MOTION - COMMITTEE APPOINTMENT

It was moved by Ms. Kiteley, seconded by Mr. Cass THAT Hope Sealy be added as a member of the Special Committee on Relief and Assistance.

Carried

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MOTION - AGENDA - COMMITTEE REPORTS TAKEN AS READ

It was moved by Mr. Epstein, seconded by Ms. Weaver that the Reports listed in paragraph 4 of the Agenda (Reports to be taken as read) with the exception of Item 3 in the County and District Liaison Committee Report be adopted.

Carried

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Admissions
Clinic Funding
Communications
County and District Liaison (except Item 3)
Discipline Policy
Equity in Legal Education and Practice
Finance and Administration
Insurance
Investment
Lawyers Fund for Client Compensation
Legal Aid
Legal Education (2 Reports)
Legislation and Rules
Libraries and Reporting
Professional Conduct
Professional Standards
Research and Planning
Specialist Certification Board
Tulk Dissenting Reasons
Unauthorized Practice
Women in the Legal Profession

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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.

William Mark McDonald	32nd Bar Admission Course
Laura Ann Armstrong	34th Bar Admission Course
Lori Lynn Lowther Cruickshank	34th Bar Admission Course
Timothy Hollinrake Pettit	34th Bar Admission Course

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DISCIPLINE COMMITTEE

Re: IAN THOMAS MCEACHERN, Lindsay

This matter was adjourned at Special Convocation on October 21st and put over to today's date.

It was moved by Mr. Lerner, seconded by Ms. Bellamy that the matter be adjourned to proceed on November 25th, 1993.

Carried

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COMMITTEE REPORTS

ADMISSIONS COMMITTEE

Meeting of October 14th, 1993

22nd October, 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 14th of October, 1993 at 9.30 a.m., the following members being present: Mr. Carter (Chair), Ms. Mohideen, Ms. Moliner and Messrs. Farquharson and Goudge.

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

A.

POLICY

- A.1. There are no items to report at this time.

B.

ADMINISTRATION

B.1. READMISSION FOLLOWING RESIGNATION AT OWN REQUEST

- B.1.1. Anthony C. Abbott was called to the Bar of Ontario on March 1970. Mr. Abbott resigned his membership in the Society at his own request in February 1992. No fees or levies were outstanding at the time of his resignation. Mr. Abbott applies for readmission to the Society.

- B.1.2. In his letter of application dated September 13, 1993 Mr. Abbott states that his resignation was due mainly to reasons of economy, and that he has been in active practice in the Province of British Columbia since 1991.

Your Committee recommends that the applicant be readmitted to membership in the Society.

B.2. REINSTATEMENT AFTER SUSPENSION - PETITIONS FOR WAIVER OF EXAMS

- B.2.1. Sherri Barnhorst was called to the Bar of Ontario on April 19, 1978. She was suspended for non-payment of the annual fee on February 25, 1983. Ms. Barnhorst now seeks to be reinstated without being required to sit requalification examinations.

- B.2.3. In her letter of application dated September 16, 1993 Ms. Barnhorst states that for the last ten years she has worked from her home, writing legal educational material for secondary and post secondary institutions. She has also taught law courses at community colleges.

- B.2.4. Ms. Barnhorst states that she plans to continue writing and teaching and that her future plans do not include the private practice of law.

- B.2.5. Ms. Barnhorst's letter of application for reinstatement and curriculum vitae were before the Committee for consideration.

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

B.3. John Murray McPherson was called to the Bar of Ontario on March 29, 1977. He was suspended on February 15, 1980 for non-payment of the annual fee. Mr. McPherson now seeks to be reinstated without being required to sit requalification examinations.

B.3.1. Mr. McPherson states in his letter of application dated September 23, 1993 that he was called to the Bar of the Province of Alberta on February 1, 1978. From 1979 to 1981 he was not engaged in the practice of law. From April 1981 until the present, without interruption, he has been engaged in the practice of law in Alberta as a Crown Prosecutor employed by the Department of Justice of the Province.

B.3.2. Mr. McPherson states that the purpose of his application is to regularize his membership in the Law Society of Upper Canada. He states further that although at present he has no intention of returning to live or work in Ontario, if there is a change in his circumstances in the future, it may be that he may wish to return to Ontario to practise law.

B.3.3. Mr. McPherson's letter of application for reinstatement was before the Committee for consideration.

Your Committee recommends that the applicant be reinstated to membership in the Law Society without the necessity of writing the requalification examinations.

B.4. Ilan Michael Ramati was called to the Bar of Ontario on April 12, 1984. He was suspended for non-payment of the annual fee on February 26, 1988. Mr. Ramati now seeks to be reinstated without being required to sit requalification examinations.

B.4.1. In his letter of application dated October 8, 1993 Mr. Ramati states that from the period of February 26, 1988 until the present he has been either an employee or a legal consultant for various feature film production and distribution companies in Los Angeles, California. In his application Mr. Ramati describes the work he has performed in those capacities.

B.4.2. Mr. Ramati states that he plans to return to Ontario to practise law in the future (possibly in 5 - 10 years) in the area of entertainment law, and his request for reinstatement is specifically for this purpose.

B.4.3. Mr. Ramati's letter of application was before the Committee for consideration.

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

B.5. DIRECT TRANSFER - COMMON LAW - SECTION 4(1)

- B.5.1. The following candidates have met all the requirements to transfer under section 4(1) of Regulation 708 made under the Law Society Act:

Nicholas Peter Katsepontes
Victor Peter Leginsky
Valerie Charlyn McGee
Maureen Shebib

Approved

B.6. PETITION FOR ADMISSION AS LAW PROFESSOR WITHOUT EXAMINATION

- B.6.1. Richard M. Brown (LL.B. 1975 from Queen's University), who after completing articles in Ontario in 1976, entered an LL.M. program at Harvard rather than entering the teaching term of the Bar Admission Course.
- B.6.2. In a letter dated September 28th, 1993, he outlines the teaching positions he has held from 1977 to the present. He states that currently he is a full-time arbitrator save for teaching one university course.
- B.6.3. Mr. Brown states "I am aware that law teachers are normally called upon the commencement of their third year of full-time teaching, and that I do not meet that requirement."
- B.6.4. He asks to be advised whether he is qualified for admission to the Law Society on the basis of his having spent the equivalent of more than two years full-time as a law teacher in Ontario, completed articles in Ontario, taught for many years in B.C. and having extensive experience as a labour arbitrator.
- B.6.5. Mr. Brown's petition was before the Committee for consideration.

Your Committee recommends that Mr. Brown's petition be denied. Section 5 of Regulation 708 is very specific and limited in its application. Mr. Brown does not fall within the specific provisions and there is no discretion in the Admissions Committee to extend the application of this section to grant Mr. Brown's petition.

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

- B.7.1. The following candidate having successfully completed the 32nd Bar Admission Course and having deferred his call to the Bar now has filled the necessary documents and paid the required fee and applied to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on October 22nd, 1993:

William Mark McDonald

Approved

22nd October, 1993

- B.7.2. 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 October 22nd, 1993:

Lori Lynn Lowther Cruickshank
Timothy Hollinrake Pettit

Approved

B.8. REVIEW OF COMPENSATION TO EXAMINING BOARD

- B.8.1. In light of the substantial changes to the examination process, your Committee felt it appropriate to review the compensation to the members of the Examining Board.
- B.8.2. In the past, the members of the Examining Board have received a \$500.00 honorarium for their services in this respect.
- B.8.3. After discussion, your Committee recommends that the compensation to the members of the Examining Board be revised as follows:
1. a one-time payment of \$500.00 per examiner for the preparation required to set the new examinations; and
 2. a \$500.00 honorarium per examiner for each sitting of the oral examination which will include the examination of the first candidate plus \$150.00 per examiner for each additional candidate.
- B.8.4. The amount recommended can be accommodated within the current year's Admissions budget.

C.
INFORMATION

C.1. ROLLS AND RECORDS

C.1.1. (a) Deaths

The following members have died:

David George Searle Toronto	Called March 19, 1970 Died March 12, 1993
Colin Emerson Bennett Toronto	Called September 17, 1936 Died April 30, 1993
Sharon Anne Miller Toronto	Called March 23, 1973 Died July 14, 1993
Alexander John MacIntosh Toronto	Called November 18, 1948 Died July 24, 1993
Bruce Verchere Montreal, PQ	Called June 17, 1977 Died August 28, 1993

22nd October, 1993

George Charles Conn
Toronto

Called March 21, 1969
Died September 4, 1993

Walter Tarnopolsky
Toronto

Called January 16, 1970
Died September 15, 1993

James Matthew Jakubowski Jackson
Ottawa

Called April 14, 1986
Died September 15, 1993

Helen Frances Okuloski
Stoney Creek

Called November 21, 1935
Died September 21, 1993

Margo Gwen Sim
Nepean

Called March 29, 1989
Died September 24, 1993

Noted

C.1.2. (b) Permission to Resign

C.1.3. The following member was permitted to resign his membership in the Society and his name has been removed from the rolls and records of the Society:

Gerald Oleh Jarson
Toronto

Called March 19, 1970
Permitted to Resign-Convocation
September 23, 1993

Noted

C.1.4. (c) Disbarments

C.1.5. 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:

Edward John Freyseng
Toronto

Called March 17, 1967
Disbarred-Convocation
September 23, 1993

Noted

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1993

R. Carter
Chair

THE REPORT WAS ADOPTED

22nd October, 1993

COMMUNICATIONS COMMITTEE

Meeting of October 14th, 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 14th of October, 1993, the following members being present: D. Bellamy (Chair), R. Murray, C. Curtis, C. DuVernet, S. Elliott, R. Kemp-Welch, A. Lawrence and S. Thom. Also in attendance: C. Wackermann and G. Zecchini.

A.
POLICY

The Chair of the Communications Committee undertook to Convocation last month that the Communications Committee would formulate a communications advertising policy that could be applied across all departments and committees of the Law Society.

Your committee reviewed the first draft of a Communications Policy. Members made several amendments and recommendations which will be included in a second draft of the policy to be discussed at the November 11 meeting.

C.
INFORMATION

1. Client Information System

The Client Information System is now ready. The Communications Department will begin a marketing campaign to the profession at the end of October. The brochures will be available on a minimum order basis (25 copies per order). The main booklet will be priced at \$.75 and the three supporting brochures will cost \$.25.

2. Call Statistics

The Lawyer Referral Service received 13,890 calls this month for a total of 139,811 since the beginning of the year. The number of calls is comparable to last year's.

Dial-A-Law received 25,457 calls in September, 14% fewer calls than last year at the same period. The total number of calls this year is 247,008.

22nd October, 1993

3. Media Activity

A summary of the media activity for the month of September indicates the following list of popular media issues in order of priority: Discipline, access to the legal profession by women, articling students, and other miscellaneous topics.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1993

D. Bellamy
Chair

THE REPORT WAS ADOPTED

COUNTY AND DISTRICT LIAISON COMMITTEE

Meeting of October 14, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of October, 1993 at 11:30 a.m., the following members being present: L. Brennan (Acting Chair), C. Curtis, S. Elliott, and D. Murphy. The following members of the County and District Law Presidents' Association Executive were also in attendance: H. Arrell, N. DiGiuseppe, S. Foley, R. Gates, Hornseth, J. Morissette and M. O'Dea. Staff in attendance was: A. John (Secretary).

1. RULE CHANGE - PLACE OF TRIAL

The Committee discussed the proposed Rule change currently before the Civil Rules Committee concerning changes of venue. The County and District Law Presidents' Association will be presenting a resolution for discussion at the November 1993 Plenary.

2. PLENARY FOR NOVEMBER 9, 10 AND 11, 1993

A final agenda for the November 1993 Plenary will be distributed to all benchers and Law Presidents. The Committee urges all benchers to make a special effort to attend the plenary. In addition, all Committees are requested where possible to deal only with urgent business on Thursday, November 11, 1993 to allow additional time for benchers to attend the plenary.

3. NEW COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION COMMITTEE MEMBER APPROVED

The Lawyers' Fund for Compensation Committee has approved a new member to be chosen from the County and District Law Presidents Association Executive.

22nd October, 1993

4. COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION COMMITTEE - MEMBERSHIP ON THE LEGAL AID COMMITTEE

The Committee discussed the criteria recommended by the Legal Aid Committee for the selection of non-bencher members from categories set out in the statute. The Committee received suggestions on the best way to have a CDLPA Executive Member appointed in the category for lawyers.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1993

R. Bragagnolo
Chair

THE REPORT WITH THE EXCEPTION OF ITEM 3 WAS ADOPTED

DISCIPLINE COMMITTEE

Meeting of October 14th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of October, 1993, at 1:30 in the afternoon, the following members being present:

H. Strosberg (Chair), D. Scott, M. Cullity, N. Graham, C. Hill, R. Manes, F. Mohideen, M. Moliner, S. Thom, M.E. Martin, D. McPhadden

R. Tinsley, M. Brown, S.Kerr, J. Yakimovich, S. Hodgett and H. Rosenthal also attended.

B.
ADMINISTRATION

B. RULE 20 APPLICATION - CHARLES C. ROACH TO EMPLOY RICHARD I. KESTEN

B.1. The Committee had before it an application by Charles C. Roach to employ Richard Kesten as a law clerk. Mr. Kesten was suspended for disciplinary reasons in November, 1992.

B.1.2. The matter was adjourned so that further information could be obtained from Mr. Roach.

C.
INFORMATION

C.1. FIRM NOTIFICATION OF ONGOING COMPLAINT INVESTIGATIONS INVOLVING AN INDIVIDUAL FIRM MEMBER

C.1.1. At a recent Authorization Meeting, the Chair and Vice Chairs of the Committee considered a matter where it appeared that a partner in a law firm with carriage of a litigation file had failed to proceed with the case in a timely manner and had evaded the client's efforts to ascertain the status of the matter.

C.1.2. The Committee considered whether, in appropriate circumstances, the Law Society should contact other firm members and disclose details of ongoing investigations. The purpose of such communication would be to limit any potential prejudice to the firm's client and to minimize the chance of a negligence claim arising in which all firm members could be found liable.

C.1.3. For purposes of discussion, the following additional information was before the Committee:

1. Details of ongoing complaint investigations are not presently disclosed to any party outside the Law Society except the solicitor involved and the complainant. Other parties who may have information that might benefit the Society's investigation are also contacted.
2. In 1991, Convocation approved a "Designated Parties" Programme. Under this initiative, a law firm may request that the Law Society contact a lawyer designated by the firm as a means of notification that a Discipline proceeding, Complaint or Error & Omissions enquiry was being initiated against a firm member. Details of the matter are not disclosed to the designated party. Despite periodic notices to the profession about the existence of the programme, only twenty firms are currently enrolled as participants.
3. Copy of a memorandum from Andrew Brockett to Richard Tinsley dated September 30, 1993 is at Attachment A.

C.1.4. After a discussion of the issues involved including the effect on Errors and Omissions claims and the fiduciary duties of partners it was decided to put an item in The Discipline Digest and The Benchers Bulletin to canvass the views of the profession.

C.2. INVITATION TO A JURY TO DISREGARD THE LAW

C.2.1. On February 22, 1993, the Chair and Vice-Chairs of Discipline released reasons in the matter of Douglas H. Christie (Attachment B). Mr. Christie had been subject to complaints concerning his conduct in the defence of a number of individuals charged before the Courts.

C.2.2. In accordance with the recommendations of the Yachetti Committee, the Chair wrote reasons for not authorizing a complaint against Mr. Christie (see Attachment B at par. 5). In the course of giving reasons the Chair made the following statement, which has been the subject of much public comment:

By these reasons, I alert the profession that in the future the Chair and Vice-Chairs of Discipline will consider a clear invitation to a jury to disregard the law to be sufficient cause to initiate the discipline process by directing the issuance of the complaint. (Attachment B at par.43).

C.2.3. Law supporting this position is found in *R. v. Mortgentaler* (1988), 44 D.L.R. (4th) 385 (S.C.C.). An excerpt from *Mortgentaler* is found at par 41 of Attachment B.

C.2.4. There have been a number of commentaries to the effect that a counsel in extreme instances should not face disciplinary action for inviting the jury to disregard laws which in good faith he or she believes to be unjust. This argument maintains that the jury functions as a democratic bulwark against unjust laws to which the accused may in extreme cases appeal. The argument has also been made that any sanctions for such behaviour are best meted out by the Courts.

C.2.5. After discussion, the Committee was of the view that the comments made by the Chair and Vice-Chairs in the Christie matter were an appropriate expression of the policy.

C.3. RULE 20 - DEVELOPMENT OF PROCEDURAL FORMAT FOR APPLICATIONS

C.3.1 In April, 1993, the Committee approved in principle the idea that a standardized format be developed for use in all applications by lawyers to employ former lawyers who have been disbarred, suspended or who were permitted to resign.

C.3.2. Staff intend to present to the Committee at its November meeting a "mock up" application, containing all the information that will be available to the Committee if this format is adopted.

C.3.3. It is proposed that a Rule 20 application will proceed through the following steps:

1. Letter from a member requesting permission to employ a disbarred (etc.) lawyer.
2. Application package sent to member - the package will explain the process in detail. It will also contain forms to be completed which will provide the Society with background information about the member, the plan of supervision proposed by the member and a draft undertaking for the member's signature which would require the member to report to the Society any change in the arrangements approved by Convocation.
3. Upon receipt of this information from the member, reports from various departments will be prepared which will provide background information about the member and the disbarred (etc.) lawyer - included in this material will be any Discipline Committee Report.
4. A draft affidavit to be signed by the member which will have attached as exhibits all of the information provided by the member and gathered by the Law Society is forwarded to the member.
5. Committee considers application.
6. Convocation considers application.
7. If Convocation approves the employment arrangement, the Professional Standards Dept. will conduct an on-site review approximately six months after the commencement date.

22nd October, 1993

- C.3.4. Given the confidential nature of some of the information attached to the member's affidavit, it will be recommended that all Rule 20 applications considered by Convocation be held *in camera*.
- C.3.5 It will also be recommended that the process of compiling information for Rule 20 applications be co-ordinated through the office of Senor Counsel, Discipline.
- C.3.6. Finally, the Committee will be asked to consider whether a "processing fee" be charged to defray the costs incurred by the Society in gathering information in connection with the application.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1993

H. Strosberg
Chair

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

- Item C.-C.1.3.3. - Copy of a memo from Mr. Andrew Brockett to Mr. Richard Tinsley dated September 30, 1993 re: Complaints against members: whether the Law Society may notify the partners or employers of a member that a complaint against the member has been received.
(Attachment A - A-2)
- Item C.-C.2.1. - Reasons in the matter of Douglas H. Christie and in the matter of Subsection 9(2) of Regulations 708 under the Law Society Act, R.S.O. 1990, c. L.8.
(Attachment B - B-36)

THE REPORT WAS ADOPTED

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of October 14th, 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 14th of October 1993, the following persons being present: Stephen Goudge (Chair), Denise Bellamy, Colin McKinnon, Marie Moliner, Nora Richardson, Stuart Thom, April Burey, Jacinth Herbert, Wes Marsten, Andrew Ranachan, Donald Crosbie, Mimi Hart and Alexis Singer.

C.
INFORMATION

C.1 Report of the Wilson Task Force on Gender Equality in the Legal Profession

C.1.1 The committee reviewed the staff summary of the extent to which recommendations of the Wilson Report have already been dealt with by the Law Society or are presently under consideration. The Chair will consult with the Chairs of the Legal Education and the Women in the Legal Profession committees concerning further action to be taken on this report.

C.1.2 There was discussion of the need for the Law Society to publicize the extent to which its programs have dealt with the Wilson Report. It was agreed that there should be further consultation with the Director of Communications and that the Chair will raise this issue when he meets with the Chairs of the Legal Education and Women in the Legal Profession committees.

C.2 Proposed Rule on Non-Discrimination

C.2.1 A report was received on the work being done by Denise Bellamy and David Scott on reviewing the letters received on this matter. It was pointed out that the work of the Professional Conduct Committee on the format of future conduct rules may effect how Rule 28 is drafted. The Chair has suggested that a special meeting with the Professional Conduct Committee and the Women in the Legal Profession Committee should be arranged to deal with the issues raised by the letters. It is hoped that the review of the letters might be completed in time for next committee day and that an evening session with the other committees could be set up shortly thereafter.

C.3 Placement of Equity Students

C.3.1 The Director of Student Aid and Placement reported that at present there are only 28 students seeking articling positions. Of these, 50% are currently working without pay or working in non-legal positions. Of the 28 students, 11 are equity students, 50% of which are working. 15 positions are still available and there was some optimism that the demand for articling positions can be suitably managed. Since the summertime, of the 100 students registering for assistance in placement, 72 have been placed. It was reported that the Legal Education and Finance and Administration committees will be looking at a proposal to provide financing to students seeking articling positions or who are currently articling without salary. Efforts are also being made to share articling positions with some firms offering a challenge by providing half a year's articling if some other firm would match with the balance of the year. The committee was advised that the Delos Davis Guild held a pre-articling interview seminar for Black students and the committee was asked whether it could assist in a similar program in the future. The Chair saw the issue as dividing itself into two components. One was the short-term issue of immediate placement of students requiring articles and a longer term issue concerning future activities of the committee. It was the longer term issue that might provide the Delos Davis Guild with some assistance. The shorter term issue is one that should be discussed with the law deans.

- C.3.2 It was agreed that with respect to the 11 equity students still seeking articling positions, that The Director of Student Aid and Placement would be requested to determine whether they were prepared to have special efforts made on their behalf personally and whether or not such action was necessary to place them at this time.
- C.4 Law Deans Dinner - November 15, 1993
- C.4.1 There was a brief discussion of the three main topic items suggested by the Chair. The Wilson Task Force Report requires consultation with the law deans. The placement of articling students is an important discussion as noted above. An update from the law schools on their enrolment of equity students is the third point.
- C.4.2 There was a discussion about the financial needs of equity students and of the efforts that were being made to assist Joint Committee accreditation students. With respect to the committee's efforts to develop educational programs for Joint Committee students, the Chair advised that he was awaiting a reply from the government concerning possible support.
- C.5 1992/93 Budget Results
- C.5.1 The under-spending of the 1992/93 budget was noted and the committee was reminded that we are entering into the 1994/95 budget exercise. It was also noted that a number of the Wilson Task Force Report items and the education and implementation aspects of the proposed Rule 28 might have significant budget implications for the committee. They should be carefully considered in the near future so that appropriate submissions can be made in the budget process.
- C.6 Recommendations on Employment Equity from Strategic Planning Conference
- C.6.1 This item was deferred until the next meeting.
- C.7 Butterworth Bursaries
- C.7.1 It was agreed that the same process would be applied this year to the distribution of the \$10,000 Butterworth grant as was applied last year. That is, the money was distributed equally amongst the six law schools with the law deans being given the authority to determine how the money should be distributed to the students meeting the general qualifications set out by the committee.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October 1993

S. Goudge
Chair

THE REPORT WAS ADOPTED

22nd October, 1993

INVESTMENT COMMITTEE

Meeting of October 14, 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 14th of October, 1993 at nine-thirty in the morning, the following members being present: Messrs. Wardlaw (Chair), and Furlong. 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 together with supporting documentation for the month ended September 30, 1993, see attached.

Approved

2. Investment Activity for 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	Midland Walwyn	102.170	\$1,021,700	7.440%
\$500,000 7.70% THOMSON CORP. BONDS due Dec. 15, 2003	Scotia McLeod	101.200	\$ 506,000	7.530%
\$1,400,000 9.25% BELL CANADA COUPONS due May 15, 2006	Scotia McLeod	35.755	\$ 500,570	8.300%

22nd October, 1993

These investments were made on the advice of Martin, Lucas and Seagram Ltd., our independent investment counsel, and with the Director of Finance's approval. The Committee was asked to ratify the purchase of these investments.

Ratified

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 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 the month ended September 30, 1993. (Schedule A)

THE REPORT WAS ADOPTED

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Meeting of October 14th, 1993

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 14th of October, 1993, at 10:30 a.m. the following members being present: S. Lerner (Vice-Chair in the Chair), N. Graham, M. Hickey, D. Murphy, S. Thom, R. Wise; J. Brooks, S. Hickling, H. Werry and J. Yakimovich also attended.

A.
POLICY

1. ELIGIBILITY OF REVIEW SUB-COMMITTEE MEMBERS
SITTING ON DISCIPLINE COMMITTEE HEARINGS

In an effort to process claims more quickly, sometimes a claim is paid out prior to the discipline hearing of the solicitor in respect of which the claim is made. As a grant is made on the basis the solicitor was dishonest, it was decided that any Bencher involved in the approval of such a grant should not sit as a member of the Discipline Committee hearing the allegations against the same solicitor. It might be alleged that the Bencher involved had prejudged the issue before the Discipline Committee.

IT IS RECOMMENDED that the secretary for the Discipline Policy section is to be advised of the Committee's view in this matter and that a procedure be developed by the Staff for avoiding this situation.

22nd October, 1993

2. ASSIGNMENT AFTER THE AWARD OF A GRANT

A solicitor who acts for many claimants involving a disbarred lawyer has objected to the procedure that has been followed in the past in similar circumstances. A Receiver has been appointed to dispose of the assets of a development company owned by the disbarred lawyer. The claimants to the Fund also have claims to the Receiver for a share in the eventual proceeds of the sale of assets. The claimants may also have a claim against the disbarred lawyer's innocent partner. The claimants have been advised that they may proceed with their claims to the Fund prior to exhausting these other avenues of recovery, on the condition that they assign to the Law Society the first dollars of any subsequent recovery, up to the amount of the Fund's grant. The solicitor opposed the assignment in relation to claims which exceeded the per claimant limit.

The Committee approved the position taken by the Fund whether or not the claim was in excess of the per claimant limit. Claimants would have the option of not proceeding with their claims at this time if they felt it would be in their best interest to receive what is available through other sources and then apply to the Fund for any shortfall. Further the Committee felt that a claimant in a hardship situation could ask the Referee to recommend that the assignment not apply or apply only after a certain level of recovery had been attained.

B.
ADMINISTRATION

1. NEW COMMITTEE MEMBERS AND ASSIGNMENT TO SUB-COMMITTEES

The Chair appointed the new non-bench member, Debora Batstone, to the Review Committee and Daniel J. Murphy, Q.C., to the Appeal Sub-Committee.

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 June and September 1993 and a graph showing claims made and outstanding claims is attached. (Pgs. C1 - C5)

3. Accounts approved by Assistant Secretaries in September amounted to \$4,067.39.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1993

C. Ruby
Chair

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

- Item C.-1. - Grants approved by the Review Committee and by the Lawyers Fund for Client Compensation Committee - October 14, 1993.
(Schedule "A")
- Item C.-2. - Copies of Financial Summary as at June and September 1993 and a graph showing claims made and outstanding claims.
(Marked C1 - C5)

THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

Meetings of October 14th and October 15th, 16th and 17th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Thursday, the 14th of October, 1993, at 10:30 a.m.

The following members were in attendance: Philip Epstein (Chair), Colin McKinnon (Vice-chair), Lloyd Brennan, Maurice Cullity, Susan Elliott, Stephen Goudge, Joan Lax, Marc Rosenberg (non-Bencher member), and Roger Yachetti. Staff in attendance were Marilyn Bode, Brenda Duncan, Mimi Hart, Margaret McSorley, Alexandra Rookes, and Alan Treleaven.

A.
POLICY

No items to report this month, subject to C.2.

B.
ADMINISTRATION

B.1 DISPUTE RESOLUTION ADVISORY WORKING GROUPS

B.1.1 On February 26, 1993, Convocation approved the Final Report to Convocation of the Dispute Resolution Subcommittee of the Research and Planning Committee. The Subcommittee was chaired by Lloyd Brennan. Its successor is the Dispute Resolution Implementation Subcommittee, chaired by Allan Lawrence.

B.1.2 Recommendations relating to the Bar Admission Course are as follows:

The Law Society should take steps to include dispute resolution education and awareness in the Bar Admission Course commencing with the 1993-94 teaching term as follows:

- a) The Legal Education Committee should appoint an ADR advisory group from the practising bar to work with section heads and staff to design and implement an alternative dispute resolution curriculum.
- b) Dispute resolution should receive significant focus in the Civil Litigation, Family Law, and Negotiation courses.
- c) An exercise in drafting of dispute resolution clauses should be included at appropriate stages in the Bar Admission Course such as Business Law, Family Law and Legal Writing and Drafting.
- d) Materials and precedents used in all courses should be reviewed with a view to ensuring that appropriate use of dispute resolution processes is modelled where suitable.

B.1.3 The recommendations relating to the Continuing Legal Education Department are as follows:

The Law Society should promote education of lawyers in dispute resolution techniques as follows:

- a) Continuing Legal Education should develop a series of dispute resolution courses to deliver dispute resolution education to Ontario lawyers. Criteria should be developed for development of future courses.
- b) In developing these courses and the criteria, the British Columbia Continuing Legal Education Society curriculum for dispute resolution education should be evaluated and adapted as appropriate.
- c) The Continuing Legal Education Department should work with other organizations and agencies active in the field of dispute resolution education in Ontario to implement education for Ontario lawyers.
- d) The Legal Education Committee should establish and appoint a Dispute Resolution Advisory Working Group to design and implement Continuing Legal Education in dispute resolution.
- e) In the planning of Lawyers Education Update courses on every subject, the Continuing Legal Education department should consider whether or not inclusion of material on dispute resolution would be appropriate.

B.1.4 The Legal Education Committee must now appoint the ADR Advisory Group to the Bar Admission Course and the Dispute Resolution Advisory Working Group to design and implement dispute resolution programs in the Continuing Legal Education Department.

- B.1.5 It is recommended that the following procedure be approved for appointing each group:
- a) That the Legal Education Committee designate the Section Head or a person designated by the Section Head in each of the following sections of the Bar Admission Course: Business Law, Civil Litigation, and Family Law. Those three persons will together with a fourth person designated by the Legal Education Committee serve as the Bar Admission Course ADR Advisory Group.
 - b) That the Continuing Legal Education Subcommittee appoint a Dispute Resolution Advisory Working Group, such appointments to be confirmed by the Legal Education Committee.

C.
INFORMATION

- C.1 CANADIAN BAR ASSOCIATION REPORT ON GENDER EQUALITY IN THE LEGAL PROFESSION
- C.1.1 The Canadian Bar Association released its report on gender equality in the legal profession on Saturday, August 21. The report, entitled "Touchstones for Change: Equality, Diversity and Accountability", is the product of the Task Force on Gender Equality established by the Canadian Bar Association in 1991 and chaired by the Honourable Bertha Wilson.
- C.1.2 The report makes a number of recommendations relating to legal education, including articling, which fall within the mandate of the Legal Education Committee, the Equity Committee, and the Women in the Legal Profession Committee.
- C.1.3 The Director of Education reported briefly on further potential initiatives that might be taken in relation to the Canadian Bar Association Report.
- C.1.4 The Chair of the Legal Education Committee will discuss the Canadian Bar Association Report jointly with the Chairs of the Equity Committee and the Women in the Legal Profession Committee prior to their report to Convocation.
- C.2 LEGAL EDUCATION COMMITTEE SPECIAL POLICY MEETINGS
- C.2.1 The Legal Education Committee continues to face a number of pressing policy-related issues, which it is not possible to deal with effectively during the time-limited monthly meetings of the Committee. Accordingly, there were special meetings of the Legal Education Committee scheduled as follows:
- a) Friday, October 15, 1993: Mandatory Continuing Legal Education,
 - b) Saturday, October 16, 1993: Bar Admission Course Financial Issues and Future,
 - c) Sunday, October 17, 1993: Articling Placement Problems and Issues.

C.2.2 The Chair will report orally.

C.3 ONTARIO CENTRE FOR ADVOCACY TRAINING

C.3.1 Law Society members on the Board of Directors of the Ontario Centre for Advocacy Training (formerly the Advocates' Society Institute) are Denise Bellamy, Lloyd Brennan, and Joan Lax. Joan Lax has informed the Treasurer of her wish to be replaced on the Board.

C.3.2 The Treasurer has designated Neil Finkelstein to replace Ms. Lax.

C.4 RECOMMENDATIONS FROM BENCHER STRATEGIC PLANNING CONFERENCE

C.4.1 On September 25 and 26, 1992, the Benchers held a strategic planning conference on the subject of "Professionalism in the 90's: Responding to Social and Ethical Change".

C.4.2 Convocation, on May 28, 1993, adopted the following recommendations:

- a) Your Committee recommends that a committee be struck to deal with the issues of professional conduct raised by the Class Proceedings Act, 1992. These issues include advertising, the regulation of the lawyer/client relationship, control of the financing of class proceedings and the possible restriction of class proceedings practice to lawyers certified as entitled to conduct such litigation. The need for Continuing Legal Education in relation to class proceedings should also be reviewed.
- b) That the Legal Education Committee discuss with the Canadian Bar Association-Ontario ways of making professional ethics a component of all Continuing Legal Education courses offered by the Law Society and the CBA-O, in recognition of the principle that there is a need to encourage consideration of ethical issues throughout professional life.
- c) That the Legal Education Committee and the Professional Conduct Committee discuss with the Ontario Law Deans ways in which professional ethics might be given greater emphasis in the law school curricula.

C.4.3 With respect to recommendation (a), the Continuing Legal Education Department had offered a program in Toronto on April 14, 1991 entitled "New Class Proceedings Act, Are you Prepared?"

C.4.4 With respect to recommendation (b), there are monthly meetings of staff representatives of the Law Society and Canadian Bar Association-Ontario Continuing Legal Education Departments to cooperate in programming, at which time recommendation (b) will be discussed. The Director of Education will report back to the Legal Education Committee and to the Continuing Legal Education Subcommittee to determine what initiatives might be undertaken.

C.4.5 With respect to recommendation (c), the Legal Education Committee will discuss the matter with the Ontario Law Deans at their next joint meeting.

22nd October, 1993

C.5 CONTINUING LEGAL EDUCATION REPORT: COMPUTER EDUCATION FACILITY

- C.5.1 The new facility offered two courses at the end of September, both of which were a significant success. Introduction to Technology is a course designed to assist registrants to learn about the various capabilities and applications of the computer in relation to a law practice. The course attracted 10 registrants. Evaluations indicated that the program was very well received. The course was over-subscribed. Potential registrants were invited to register for the repeat program being offered on October 21, 1993.
- C.5.2 "Quick and Dirty" Word-Processing was offered on September 30, 1993 to six registrants. This course is designed to show lawyers how to organize and maximize the productivity of their word-processing system so that they can gain the most cost-effective use of its features, such as precedent preparation and organization and typing short-cuts.
- C.5.3 The facility will be offering Using Litigation Support Databases on Thursday, October 7, 1993, Computerized Legal Research - Quicklaw on October 13, Introduction to Computers on October 21, and Intermediate Word-Processing on October 27.
- C.5.4 Attached is a schedule indicating additional courses that will be offered throughout the month of November. (page 1)

C.6 CONTINUING LEGAL EDUCATION REPORT ON COURSES

- C.6.1 The report on recent and upcoming courses is attached. (pages 2-18)

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1993

P. Epstein
Chair

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

- Item C.-C.5.4 - Schedule of additional courses offered through the month of November 1993. (page 1)
- Item C.-C.6.1 - Report on recent and upcoming courses. (pages 2 - 18)

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

SUPPLEMENTARY REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee held its second meeting on Friday, October 15, at 9:00 a.m. The following members were in attendance: Philip Epstein (Chair), Donald Lamont (Vice-chair), Colin McKinnon (Vice-chair), Lloyd Brennan, Maurice Cullity, Susan Elliott, Stephen Goudge, Joan Lax, Dean Donald McRae (University of Ottawa), Dean Marilyn Pilkington (Osgoode Hall Law School), Mohan Prabhu (non-Bencher member), and Marc Rosenberg (non-Bencher member). Bencher Ross Murray of the C.L.E. Subcommittee was also in attendance. Special guests in attendance were Marc Bode and Paul Perell. Staff in attendance were Brenda Duncan, Laurel Evans, Alan Treleaven, and Paul Truster.

The Committee held its third meeting on Saturday, October 16, at 9:15 a.m. The following members were in attendance: Philip Epstein (Chair), Donald Lamont (Vice-chair), Colin McKinnon (Vice-chair), Lloyd Brennan, Susan Elliott, Stephen Goudge, Joan Lax, Dean Donald McRae (University of Ottawa), Dean Marilyn Pilkington (Osgoode Hall Law School), and Marc Rosenberg (non-Bencher member). Bencher Ken Howie was also in attendance. Staff in attendance were Erika Abner, Marilyn Bode, Deborah Brown, David Crack, Donald Crosbie, Marie Fortier, Mimi Hart, Margaret McSorley, Sophia Sperdakos, and Alan Treleaven.

The Committee held its fourth meeting on Sunday, October 17, at 9:00 a.m. The following members were in attendance: Philip Epstein (Chair), Stephen Goudge, Dean Donald McRae (University of Ottawa), Dean Marilyn Pilkington (Osgoode Hall Law School), and Marc Rosenberg (non-Bencher member). Non-Bencher members of the Articling Subcommittee in attendance were Janne Burton, Victoria Colby, Dora Nipp, Jay Rudolph, and Carmel Sakran. A special guest in attendance was Claudia Morrow. Staff in attendance were Marilyn Bode, Mimi Hart and Alan Treleaven.

C.
INFORMATION (CONTINUED)

C.7 MANDATORY CONTINUING LEGAL EDUCATION PROPOSAL

- C.7.1 At its Friday, October 15 meeting the Legal Education Committee considered the report entitled "Mandatory Continuing Legal Education: Should It Be Introduced In Ontario?". The report had first been presented to the Legal Education Committee at its June 10, 1993 meeting by the Continuing Legal Education Subcommittee, formerly chaired by Colin McKinnon. In light of the complexity and importance of the issues, the Legal Education Committee at its June 10 meeting had decided to schedule the special meeting of the Legal Education Committee to give the report more extensive consideration.
- C.7.2 The Legal Education Committee decided in principle to move forward with a recommendation to Convocation that mandatory continuing legal education be introduced in Ontario, and to ask Convocation to approve the carrying out of the detailed design and other preparatory work that will be required in order to present a detailed plan to Convocation.
- C.7.3 The Legal Education Committee intends to ask Convocation in November for approval of its proposal to conduct detailed design and other preparatory work, and to provide necessary related funding. Before coming to Convocation, the Legal Education Committee will approve and issue a new report on mandatory continuing legal education, prepare detailed financial information, and discuss and co-ordinate its proposal with the Law Society's Finance Committee and Insurance Committee.

C.7.4 Throughout its discussions, the Legal Education Committee was mindful of the need for mandatory continuing legal education to be affordable, accessible to every lawyer in Ontario, and of a high quality. Moreover, the proposed scheme is to be developed on the basis that mandatory continuing legal education can be offered on at least a break-even budget basis, once approved initial design and other start-up costs have been incurred.

C.8 BAR ADMISSION COURSE FINANCIAL ISSUES

C.8.1 At its Saturday, October 16 meeting the Legal Education Committee considered the funding pressures facing the Bar Admission Course.

C.8.2 The Legal Education Committee determined that in principle it would be recommending to Convocation that the current model of Bar Admission Course be continued on as lean a budget as reasonably possible, and that the funding shortfall existing after taking into account the Law Foundation grant be covered out of student tuition to a maximum of a \$500 increase in tuition. Any remaining shortfall would be covered out of the annual fees of Law Society members. An important component in the funding proposal would be the enhancement of existing student financial aid resources through creation of a special student bursary fund. The new bursary fund would provide bursaries for financially needy students out of a fund to be established out of a modest amount to be included in the annual fees of Law Society members.

C.8.3 Before asking Convocation to approve its proposal, the Legal Education Committee intends to produce a detailed draft budget for the 1994-1995 Bar Admission Course year, so that the Committee can include in its proposal the exact amount of funding it anticipates receiving from the Law Foundation and from each student, and possibly from Law Society members through tuition. The draft budget will include details of the contribution that it is proposed Law Society members make to the bursary fund.

C.8.4 In its deliberations, the Committee considered the Law Society's obligation to serve the public interest through effective education and testing of its student members. In light of this obligation, the Committee determined that it would not be appropriate to move to a United States type of non-teaching model or to return to the previous Ontario Bar Admission Course model.

C.8.5 An essential feature of the Legal Education Committee's proposal 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 of the current program. In conducting the review the Committee anticipates studying whether to develop or adopt another model of program that would be even more effective than the current model in meeting the needs of the public and the profession.

C.9 ARTICLING STUDENT PLACEMENT CONCERNS

C.9.1 At its Sunday, October 17 meeting the Legal Education Committee considered the shortage of available articling positions both for the short and long term.

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- C.9.2 The shortage of positions for students in the current Bar Admission Course is very nearly resolved, and that therefore it will not be necessary for the Treasurer or Convocation to take major initiatives to procure positions for the current group of students. The Chair will orally provide current statistics to Convocation.
- C.9.3 The Legal Education Committee did, however, consider concerns about potential reductions in the availability of articling positions in future years, and what might be done to deal with those concerns. The Committee proceeded on the assumption that neither the Law Society nor its members have an obligation to guarantee articling positions for all students, but that the Law Society should take reasonable and determined steps to minimize the problem.
- C.9.4 The Legal Education Committee resolved that it would, in conjunction with the Equity Committee, the Articling Subcommittee, and the staff, take the following steps:
1. Communicate more extensively with the profession about the need to create articling positions and the desirability of maintaining and enhancing the articling program.
 2. Cooperate with the Equity Committee to ensure that students are not disadvantaged in obtaining articling positions by reason of their minority status or disability.
 3. Review the procedures and documentation relating to the approval of articling principals and articling education plans and the evaluations of the articling education provided so as to minimize burdens placed on articling principals while maintaining the goals of the articling reform proposals.
 4. Review articling recruitment procedures with a view to enhancing the effectiveness of the articling recruitment process.
 5. Co-operate with the law schools in developing articling placements and in preparing law students to search effectively for articling positions.
- C.9.5 The Legal Education Committee determined that as a priority it must also deal with the following issues, and therefore referred them to the Articling Subcommittee for consideration and recommendation:
1. Non-payment of salary to articling students, and in particular what guidelines to put in place to regulate non-payment of salary.
 2. Financial assistance for unplaced articling students and for articling students who are receiving no salary.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1993

P. Epstein
Chair

THE REPORTS WERE ADOPTED

22nd October, 1993

LIBRARIES AND REPORTING COMMITTEE

Meeting of October 14th, 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 14th of October, 1993 at 8:30 a.m., the following members being present:

D. Murphy, (Chair), T. Bastedo, G. Farquharson, M. Hickey, B. Pepper, M. Weaver and M. Hennessy. G. Howell also attended.

A.
POLICY

no items

B.
ADMINISTRATION

1. County Libraries - 1993 Finances & 1994 Budgets

The 47 county law associations have submitted their 1993 financial statements (projections to the end of the year, based on figures for 2/3 of the year) and 1994 budget documents. The financial figures have been collated into a draft set of charts (one for 1993 finances, the other for 1994 budgets).

The Chief Librarian has not had an opportunity to examine specific problem situations, or to meet with county representatives at the CDLPA Library Committee meeting set for October 15th. However, in general, the charts indicate the following:

1. In 1993, if projections hold to year-end, the library system will meet its budget by "breaking-even" on the year's operating results, leaving a modest capital surplus (balance forward) of some \$200,000 across the system
2. Individual counties vary widely in operating results, with several counties being special concerns for 1993 (including Hamilton, Renfrew and York County), and several more for 1994 (especially Carleton)
3. For 1994, the estimated operating deficit for the system totals almost \$300,000, which would more than erase 1993's projected balance to be carried forward.

22nd October, 1993

4. The 1994 budgeted expenditures over 1993 projected expenditures represent a \$350,000 increase, a 7.2% increase. Such a percentage increase is clearly far too high, but the counties would be understandably nervous about increases in book costs, given their experience in the past several years.
5. For 1994, budgeted revenues show only a slight increase over 1993 projected revenues, reflecting the fact that:
 - a) the Society indicated in its budget - requesting memo that central funding would remain level (at best) for 1994, and
 - b) the counties have not budgeted yet for local increases in their law association library fees.

If increased expenditures are to be covered only by local increases in revenues, then local library fees will have to be significantly increased in many locations, some dramatically increased.

This matter of local fee increases (and its potential impact on local revenues, maybe UP, maybe DOWN) will be discussed at the CDLPA October 15th meeting.

The Chief Librarian will report further to the November meeting of the Committee, on the results of budget discussions with particular counties as well as the results of the October 15th meeting.

2. Search-Law - Increase in Service Charge

The Chair referred to Mr. Crosbie's October 1st memorandum on Search-Law's operating deficit of \$34,772 in 1992-1993, and discussion ensued on how Search-Law could operate on a break-even basis. It was decided that the service fee charged by Search-Law would be increased immediately in order to meet budget estimates for revenue. Search-Law conducts 1,500 searches for Ontario lawyers per year, and accordingly will be charging an additional fee of \$25 on average per search.

C. INFORMATION

1. County & District Law Presidents' Association, October 15th Agenda

The Chief Librarian will be co-chairing a meeting of the CDLPA Library Committee on Friday, October 15th (the day after Committee day). The main items on the Agenda are:

- a) the membership situation re the county law associations - need for (and benefit in) Law Society collection of county law association library fees?
- b) 1994 Budgets of the 47 county libraries
- c) Potential funding problem for 1995?
(especially given worsening Law Foundation revenues)

2. County Libraries - Educational Qualifications of Staff

Last month, the Committee asked the Chief Librarian to report on the educational qualifications of the library staff for the 47 county libraries. A summary of the report is as follows:

- a) one-third of the county libraries are staffed by people with librarianship qualifications (9 library science degrees, 7 library technician diplomas); one-third are staffed by people with post-secondary education (2 law degrees, 9 undergraduate degrees, 4 community college diplomas); and the remaining one-third are staffed by people with high school education.
- b) only 10 counties have full-time staff coverage of their libraries, while amongst those, only the three largest (York County, Carleton and Hamilton) have two or more full-time library employees.

3. Great Library - CD-Rom technology

The Great Library now has three workstations (two in the American Room and one in the Periodicals Room) that are dedicated to utilization of CD-ROM (compact disc) products. So far, the discs acquired have been U.S. products, particularly from the major law publisher (West Publishing in Minneapolis). However, the library has just acquired the first two Canadian CD-Rom's on law:

- a) Dominion Tax Cases from CCH
- b) B.C. Consolidated Statutes from the B.C. Government

The Great Library is one of the most advanced "bar" libraries in North America in its utilization of published CD-Rom products and is the only public law library in Canada with multiple CD-Rom workstations and compact disc products. The question as to the usage of CD-Rom products in the county libraries (necessitating the purchase of CD-Rom players for the "handful" of counties that have 386 personal computers) will be addressed at the October 15th CDLPA Libraries meeting.

4. County Libraries - Survey of holdings of CCH's Dominion Tax Cases

Pursuant to the last sentence of agenda item C.3 above, the Chief Librarian conducted a survey of the 16 largest county law associations (eight regional and eight "sub-regional" centres, all with membership at 125+ lawyers) to ascertain their current subscriptions and bound volume holdings of CCH's Dominion Tax Cases (as well as the competitor service, Carswell's Canada Tax Cases).

Two counties currently subscribe to both DTC and CTC - Carleton and Hamilton. York County and Middlesex subscribe only to CCH's DTC (Middlesex having cancelled CTC just last year). Waterloo and Essex subscribe only to DTC, also having cancelled CTC in the past 7 years. Peel, York Region and Durham (all

with large memberships) subscribe to neither service. In total, there are 8 current DTC subscriptions, and 3 CTC subscriptions. Both cost about \$500 per year for subscriptions (including annual bound volumes and indices). More information on this topic (example, comparative costs of annual book subscriptions v. CD-Rom capital plus update costs) will be provided at subsequent Committee meetings.

ALL OF WHICH is respectfully submitted

Dated this 22nd day of October, 1993

D. Murphy
Chair

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

Meeting of October 14th, 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 14th of October, at 3:00 p.m., the following members being present: C. McKinnon (Chair), M. Weaver (Vice Chair), R.J. Carter, R.W. Cass, P. Furlong, N. Graham.

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

B.
ADMINISTRATION

B.1. PRACTICE REVIEW PROGRAMME - FILE CLOSURES

B.1.1. Three Practice Review files were closed by the Committee. The first member was authorized for participation in the Programme in January of 1993 based on a referral from the Certification Board. The Board was concerned about the solicitor's Law Society complaints and Errors and Omissions claim record. A review was conducted of the solicitor's practice which indicated that the solicitor appeared to have addressed any earlier deficiencies in his practice. The solicitor has not received any complaints or claims since his authorization. The second member was authorized for participation in February of 1991. A review was conducted in April of 1991 at which time several recommendations were made to the solicitor. Staff met with the solicitor on three subsequent occasions to provide additional assistance. A Review Panel, convened in September of 1993, concluded that the solicitor had made significant progress in the Programme. Both files have been closed on the basis of the solicitors' successful completion of the Practice Review Programme.

- B.1.2. A third member was authorized for participation in the Programme in March of 1992. A reviewer attended at the solicitor's office in July of 1992. Staff also attended in February of 1993 and in August of 1993. A Review Panel was held in November of 1992 at the request of the solicitor. A second Review Panel convened in September of 1993 concluded that the solicitor's participation in the programme was no longer necessary. The file has been closed on that basis.

C.
INFORMATION

C.1. REVIEW OF THE RULES OF PROFESSIONAL CONDUCT - RULE 3

- C.1.1 In May, 1993, the Committee was invited by the Special Committee to Review the Rules of Professional Conduct to form a Working Group to review the adequacy of Rule 3 (Advising Clients). The Committee accepted that invitation, and struck the Committee as a whole as the Working Group. At the Committee's September meeting, staff were asked to prepare a preliminary draft of Rule 3 for consideration by the Working Group at its October meeting. The Committee has reviewed the initial draft. Further discussion of this item has been deferred pending a determination by Convocation as to the format to be adopted for the rules.

C.2. PRIORITIES AND PLANNING PROCESS - 1994/95

- C.2.1. The Priorities and Planning Committee asked all Standing Committees of the Law Society to review objectives, projects and programmes in the context of both their importance and their present and future impact on the Society's budget. At its September meeting, the Committee requested that staff prepare a report setting out the historical development of Standards, its current function within the Society, and the staffing and administrative implications of the proposed reforms to the Law Society Act and a mandatory review programme. A draft report was reviewed by the Committee, and revisions thereto proposed. The report, when revised, will be presented to the Priorities and Planning Committee.

C.3. STRATEGIC PLANNING CONFERENCE

- C.3.1. On May 28, 1993, Convocation adopted the report of the Conclusions and Recommendations of the Strategic Planning Conference, which report included several recommendations relating to the work of the Professional Standards Committee. The Committee was provided with a memorandum from Andrew Brockett, summarizing those recommendations, in order that they can be taken into consideration for discussion at the November meeting of the Committee.

C.4. PRACTICE ADVISORY SERVICE - STATUS REPORT

- C.4.1. The Service received 460 requests for assistance in August, 1993, a slight reduction from the volume of calls in the preceding 7 months of the year. Sole practitioners were responsible for 190 requests; 182 calls came from other members of the profession, and 88 questions arose from support staff and others. Metropolitan Toronto was the source of 307 requests. Almost 38% of the enquiries received were from members called to the Bar in the 1990's, and 39% came from members called in the 1980's.
- C.4.2. The Systems Advisor has presented on three occasions a day-long course in manual bookkeeping for lawyers, teaching the basics of law office accounting. This program arose out of the Start-Up Workshop, to assist those members who requested "more bookkeeping".

C.5. PROFESSIONAL STANDARDS - DEPARTMENTAL REPORT

- C.5.1. The staff lawyer position in the department has been filled, effective October 12, 1993, by Mark Pujolas, a sole practitioner from Don Mills, Ontario who was called to the Bar in 1977. He practises in the areas of real estate, corporate/commercial, and wills and estates.
- C.5.2. The number of open files in the Practice Review Programme has now reached 130. Authorization was granted for an additional 6 lawyers to participate in the Programme, and three files were closed by the Committee.
- C.5.3. A review panel held in September was presided over by benchers Patrick Furlong and Ross Murray, who met with three participants in the Programme.
- C.5.4. The Family Law Checklist, approved by Convocation in June, 1993, is being translated into French and prepared for printing.
- C.5.5. The Ontario Legal Aid Plan has established a committee to review possible measures to address the Plan's concerns about the competency of members on Legal Aid panels, as a result of the proposals contained in the May, 1993 report to Convocation of the Professional Standards Committee. Staff have been asked to participate in same. Staff have also been involved in various education initiatives regarding law practice management.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1993

C. McKinnon
Chair

THE REPORT WAS ADOPTED

SPECIALIST CERTIFICATION BOARD

Meeting of October 14th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCACTION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday, the 14th of October, 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), P.G. Furlong, C.D. McKinnon and G.P. Sadvari. S. Thomson, of the Law Society, was also present.

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

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 14th of September, 1993 at eight o'clock in the morning.

The Workers' Compensation Law Specialty Committee met on Wednesday, the 15th of September, 1993 at five o'clock in the afternoon.

The Labour Law Specialty Committee met on Thursday, the 30th of September, 1993 at five o'clock in the afternoon.

The Criminal Law Specialty Committee met (in person/conference call) on Friday, the 8th of October, 1993 at one o'clock in the afternoon.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 12th of October, 1993 at eight o'clock in the morning.

A.
POLICY

A.1. SPECIALIST CERTIFICATION REFERENCES

- A.1.1. Specialist applicants must provide the names of four to six lawyer referees, who are contacted independently by the Law Society. Persons not permitted to provide references include Judges, members of tribunals, members of the Specialist Certification Board, members of the assessing Specialty Committee, partners and associates.
- A.1.2. The Board recommends that the Treasurer of the Law Society should be added to the list of persons who may not provide references for Specialist Certification applicants.

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 October 11, 1988 (expiry date October 10, 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

C.1. CERTIFICATION OF SPECIALISTS

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

William G. Scott (of Toronto)
Richard Steinecke (of Toronto)

- C.1.2. The Board is pleased to report the certification of the following lawyer as a Criminal Law Specialist:

Timothy W. Zuber (of Windsor)

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:

Colin L. Campbell (of Toronto)
A. Burke Doran (of Toronto)
William J. Festeryga (of Hamilton)
K. Duncan Finlayson (of Toronto)
Edward W. Graves (of St. Catharines)
Burton H. Kellock (of Toronto)
William A. Kelly (of Toronto)
James E. Lewis (of Mississauga)
M. James O'Grady (of Ottawa)
Gerald L. Rooke (of Toronto)
John R. Sigouin (of Ottawa)
Wayne B. Spooner (of Ottawa)
Louis H. Tepper (of Kingston)
James W. Touhey (of Ottawa)
Peter Webb (of Toronto)
Brian H. Wheatley (of Toronto)
Wendell S. Wigle (of Toronto)

- 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:

W. Bruce Affleck (of Whitby)
Bernard Cugelman (of Barrie)
D. Roderick H. Heather (of Toronto)
Robert B. McGee (of Toronto)
Alfred J. Stong (of Richmond Hill)

C.3. SUB-COMMITTEE TO CONSIDER THE IMPLICATIONS OF THE RECOMMENDATIONS OF THE CIVIL AND CRIMINAL LITIGATION SPECIALTY COMMITTEE

C.3.1. The dual Civil and Criminal Litigation Specialty Committee was established in Convocation on January 29, 1993. The primary mandate of the Committee was to make recommendations to the Specialist Certification Board regarding the viability of the unique dual certification and, subject to the recommendations of the Committee, thereafter to assess the dual Civil and Criminal Litigation recertification and first-time applications.

C.3.2. The Committee held two meetings during the summer. The resultant report, including six recommendations, was considered by the Board.

C.3.3. The Board debated at length the possible implications of adopting the first, second and fourth recommendations of the report, as set out below:

C.3.3.1. Recommendation 1: The unique dual Civil and Criminal Litigation Specialty should be abolished; however, dual Specialist Certification should be permitted in any combination of Specialties.

C.3.3.2. Recommendation 2: The current Civil and/or Criminal Litigation Standards should be redrafted into two separate Standards.

C.3.3.3. Recommendation 4: The Standards should not be diluted in any way to accommodate those who wish to be certified in more than one field, however some flexibility in terms of percentage of practice time is recommended. The minimum 40% practice time in a second field [a recommended component of revised Standards] takes into account the overlapping of skills common to any two specialties.

C.3.4. The Board established a Sub-Committee to Consider the Implications of the Recommendations of the Civil and Criminal Litigation Specialty Committee, composed of R.D. Manes (Sub-Committee Chair) and G.P. Sadvari.

C.3.5. In preparing recommendations to the Board, the Sub-Committee will consult with the various Specialty Committees, including the Civil and Criminal Litigation Specialty Committee, will consider the original rationale behind the creation of the dual Civil and Criminal Litigation Specialty, and will explore how other jurisdictions deal with percentage of practice requirements.

C.4. SPECIALIST CERTIFICATION COMMUNICATIONS

C.4.1. The Board approved in principle the distribution of regular bulletins or newsletters to Certified Specialists and the profession at large regarding developments in Specialist Certification.

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- C.4.2. The Board instructed the Administrator to provide cost estimates for alternative forms of mailing, including separate mailings and piggy-back mailings with materials produced by the Law Society's Communications Department.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1993

R. Yachetti
Chair

THE REPORT WAS ADOPTED

TULK DISSENTING REASONS

IN THE MATTER OF ANDREW BISHOP TULK

DISSENT

A "Complaint" is a formal document that contains the allegations made by the Law Society of Upper Canada against a member. It is the foundation of any Law Society prosecution. The "Complaint" must be found established or dismissed. Regrettably, the Committee that heard this matter did not deal with the "Complaint" by finding it established or by dismissing it. Instead, "on the basis of the Agreed Statement and the statement of the Solicitor" agreeing with the facts that were put before the tribunal, the Committee made a finding that the conduct described in the agreed statement constituted professional misconduct. The Committee should have directed their mind, not only to the agreed statement, and whether or not the conduct there described constituted professional misconduct, but also to the "Complaint" and whether the allegations in it were established or whether they were not established. The Committee lost jurisdiction when it made neither an endorsement on the "Complaint" nor any finding respecting the "Complaint" in its Reasons for Judgment. Most significantly, without a finding that the "Complaint" was established or that it was not, we have great difficulty deciding what it was that Mr. Tulk was guilty of doing, and for what exactly are we to sentence him.

The particulars alleged in the "Complaint" were:

"Tulk allowed himself to become the tool or dupe of Bruce Orsini ("Orsini") in connection with a fraudulent transaction.

Tulk, as a partner in the firm of Blaney, McMurtry, Stapells ("Blaney"), acted as solicitor to Orsini and provided the necessary legal guidance and assistance to facilitate the sale by Orsini of 98,100 shares of Permanent Acceptance Corporation Limited ("PAC") to the public at a price of \$12.50 per share.

The assistance provided by Tulk to Orsini was a necessary element in the success of the sale of the PAC shares.

The sale of PAC shares was a fraudulent scheme wherein public purchasers paid \$12.50 each for shares that had little value and were induced to make these purchases on the basis of misrepresentations made by Orsini or agents employed by him.

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Tulk knew that the PAC shares were being sold to the public at \$12.50 per share and knew, or was wilfully blind to the fact, that a properly informed purchaser would not have invested in the PAC shares at that price.

Tulk knew, or was wilfully blind to the fact, that Milton Cork ("Cork"), a promoter of PAC was not independent of Orsini and thus the sale by Orsini of PAC shares to the public was improper.

Tulk allowed himself to be placed in a conflict of interest with Cork, in a situation where Cork required independent legal advice."

Notwithstanding all this, I proceed on the questionable assumption that these particulars were found to be established.

The evidence disclosed that Mr. Tulk, using his special experience and training in connection with securities regulation, established a complex, but in itself lawful, scheme for marketing securities to the public; this involved taking control of and manipulating the affairs of a company subject to regulation by the Ontario Securities Commission in order to achieve that object. He did this for a client. He did it for gain. (The firm of Blaney, McMurtry, of which he was a partner, received approximately \$150,000 in fees relating to this and other transactions which otherwise would not have been paid.)

Though proper in its inception, the scheme quickly became utterly improper.

A good deal of discussion before the Bench concerned the issue of whether the acts of Mr. Tulk were either a fraud on the Ontario Securities Commission or the public, and whether Mr. Tulk aided and abetted a fraud. Counsel for the Law Society indicated that he would not have recommended the penalty he did -- a modest suspension -- if he had taken the view that Mr. Tulk "set out to defraud the public". Counsel for the Law Society insisted that at no point in the transaction did Mr. Tulk's knowledge and actions amount to a fraud. If they had, he said, both he and the Committee below would have dealt with this matter in a very different way.

In my view, though I will discuss fraud, the outcome of this case should not turn solely on the legal issue of whether a fraud was committed or whether a fraud was aided by Mr. Tulk. Rather, if Mr. Tulk knowingly or with wilful blindness, assisted in preparing and executing a scheme to deceive the Ontario Securities Commission to its detriment so that it would be unable to perform its regulatory function, or assisted his client as solicitor with knowledge or with wilful blindness respecting the fact that members of the public, by reason of the client's dishonesty, were going to lose \$1,226,250 when they purchased this stock at inflated values, then the conduct is sufficiently serious that disbarment is the only appropriate result.

A fraudulent scheme is one which puts at risk an investor's money through the medium of a deceit or other dishonest means, judged according to the standards of ordinary Canadians. Crucial to an assessment of whether something is a fraud, or that someone aided a fraud, is the question of what that person knew or whether that person was wilfully blind. Wilful blindness is in law the equivalent of knowledge. It is the state of mind of someone who, suspecting facts which would make an act fraudulent, deliberately refuses to make inquiries as to whether or not those facts exist, and does so for the sole purpose of avoiding the knowledge of the fraud. Nothing less constitutes wilful blindness.

The agreed statement of fact discloses a number of points at which Mr. Tulk's knowledge or wilful blindness puts him in the position of committing a fraud or aiding in its commission. The essence of the scheme was this:

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- (i) Orsini [Mr. Tulk's client] and his nominees would constitute the board of directors of PAC through a technique known as board rotate.
- (ii) PAC would assume liability for the outstanding accounts owed by debts of Boyce [another client of Mr. Tulk whom he secured for the purposes of this scheme] and the third party to Blaney (\$99,982.55).
- (iii) Audited financial statements would be prepared and appropriate forms delivered to the OSC in order to obtain revocation of a cease trade order which was then in force and prevented the sale of any PAC shares.
- (iv) Orsini would identify an independent promoter (i.e., a promoter who was not "acting in combination" with Orsini or Boyce within the meaning of the Securities Act) who would assume the newly acquired liabilities of PAC owing to Blaney together with a debt of \$15,000 owed to PAC's accountants. The new promoter would accept responsibility for this debt in exchange for shares to be issued from treasury. The exchange of debt for shares at a rate of \$1 per share would be sufficient to ensure that the new promoter held the largest single block of issued shares in PAC and thus potential control of PAC. The intended effect of this step would be to create a new control block which would attract the Securities Act restrictions. Once the new block was in place, the Boyce shares could be sold to the public.
- (v) Orsini, through a holding company, would purchase the shares of PAC owned by Boyce.
- (vi) Orsini's company would sell those shares to the public.
- (vii) Orsini's company would retain at least \$500,000 from the sale of those shares and then amalgamate with PAC. On the amalgamation, the liquid capital pool would consist of that sum and Orsini's company would acquire multiple voting shares which would allow Orsini to gain voting control of PAC.

The essence of that scheme is that share control had to be in hands truly independent of Orsini and Boyce; otherwise, there would not only be a breach of Ontario Securities Commission regulations when Orsini began to sell shares to the public, but there would be a dishonest deception of both the public and the Ontario Securities Commission.

There were a number of points at which it is clear on the agreed facts that Mr. Tulk knew or was wilfully blind to the fact that the scheme was dishonest and nevertheless continued to take part in it.

- (1) "Orsini recruited Milton Cork ("Cork") to act as an independent promoter of PAC....Tulk recognized that Cork had limited means and could not pay the debt until Cork had the opportunity to sell his PAC shares. As Cork was issued sufficient shares to control PAC he could not readily sell his shares until Orsini took control of PAC."
- (2) "Tulk did not neglect to enquire as to Cork's independence. Rather, he elected to make no enquiries. When a junior lawyer working with Tulk on this transaction made specific enquiries on the issue of whether there could be two control blocks, Tulk refused to answer the question."
- (3) "Immediately upon purchasing the shares from Boyce at \$1 per share, Orsini's company began to sell these shares to the public at \$12.50 per share. Over 500 individual investors purchased 98,100 shares for total proceeds of \$1,226,250. The purchasers were induced to make those purchases on the basis of misrepresentations made by Orsini or agents employed by him, of which Tulk had no knowledge. Tulk was aware that the PAC shares, which Orsini had just agreed to purchase for \$1 per share, were being sold to the public at \$12.50 per share. Tulk knew that if the amalgamation had been completed as proposed, the book value of those shares to the investing public would be approximately \$1.74 per share."

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- (4) "Tulk participated in the drafting of all press releases issued by PAC. Tulk knew on December 9, 1988, that a press release issued by PAC a few days earlier had become incorrect in a material way because of subsequent events and that PAC had no obligation to issue a new press release. Tulk advised Orsini that a new press release was required, but knew that Orsini continued to sell his PAC shares to the public without a press release being issued. A correct press release was issued on December 20, 1988." Counsel for the Society, without giving us the numbers involved, intimated that a very large number of shares traded between those two dates. He said that that time period, in terms of securities regulation, was a "life time". Counsel for Mr. Tulk denied it was a "life time" but did not deny a more specific allegation regarding a great number of shares being traded during those dates. Rather he attempted to minimize the importance of a corrected press release by indicating that the press releases, in fact, were not published by the press. But the issue is not whether the absence of a corrected press release caused the purchasers to buy the shares at inflated value, but rather whether the incident disclosed that Mr. Tulk had knowledge or was wilfully blind respecting the dishonesty of the scheme as a whole.
- (5) "At the planning stage of the transaction Tulk had advised Orsini that the sale of PAC shares to the public could be viewed as abusive by the OSC unless Orsini preserved all proceeds of the sale of shares (less expenses and purchase costs for investment for company purposes only). The advice given by Tulk was that the new proceeds must be used for the purpose of funding prospective acquisitions by PAC, and could not be used for the personal benefit of Orsini. Notwithstanding this advice, in January 1989, Tulk accepted payment of \$150,000 from Orsini for outstanding legal fees (\$57,000 for accounts associated with this transaction) while making no enquiry of Orsini as to the source of those funds. Tulk was aware that Orsini had funds from another source of approximately \$84,000."

Despite this knowledge, Mr. Tulk never withdrew from the transaction and never ceased to act. Instead, he prepared the amalgamation of PAC with Orsini's company that would have proceeded in the normal cause had it not been for a cease trade order issued by the Ontario Securities Commission on the day scheduled for the actual amalgamation.

I call this assisting in a fraud. But, that aside, Mr. Tulk is clearly assisting, with knowledge or wilful blindness, in a scheme to deceive the Ontario Securities Commission and anyone who purchased this stock at what he knew was an inflated price. This is serious dishonest conduct.

The Committee below appears to have treated the matter, as did counsel before us, as a mere regulatory breach. This is simply nonsense. It is true that by breaching the Ontario Securities Act regulations, one does not automatically commit a fraud or an act of serious dishonesty. But it is equally clear that the facts that were agreed to in this case disclose both fraud and serious dishonesty. And that dishonesty had serious consequences to the public.

Perhaps the central fact of this case is that the public spent approximately \$1,226,250 on this stock swindle and the public recovered only approximately \$600,000. The public needs to be protected by the Law Society from lawyers who misuse their special skills to knowingly or wilfully blindly assist in schemes of deliberate dishonesty. This scheme caused great harm to the public. It may be that the securities legal community is under the misapprehension that these are mere regulatory breaches. These are not mere regulatory breaches. The decision of the majority in this case fails to mark the nature of the offence and the seriousness of the consequences to the people of Ontario. The majority have imposed a penalty that is appropriate to a serious regulatory breach, but have ignored the Law Society's function of protecting the public from serious dishonesty.

The Law Society of Upper Canada is too often unimpressed and unconcerned by forms of dishonesty other than the theft of trust funds. That is especially so when the lawyers involved come from large or respected firms or from Bay Street. This case is not one bit less serious than that of a solicitor who steals from a trust account. And the solicitor has repaid not one penny of the \$600,000 loss suffered by the public. It is not of great importance that he was to profit less than the principal, Orsini. He shut his eyes and carried on for profit.

The Law Society guidelines respecting Convocation's relation to panels of the Discipline Committee who hear evidence are only guidelines. But I take them sufficiently seriously that I address the question of whether there is in the decision of the Discipline Committee an error in principle or whether the decision has been shown to be manifestly wrong. It is manifestly wrong in that it treated the professional misconduct in this case as "devoid of any fraud." It is indeed fraud. But, in any event, it is conduct equivalent to fraud by way of serious dishonesty and the tribunal below was manifestly wrong and erred in principle by failing to recognize and act upon the serious dishonesty in this case.

There has been no real acknowledgment of guilt. This is most peculiar. Mr. Brown, counsel for Mr. Tulk, responding to questions from a number of Benchers, indicated that there was nothing in the agreed facts before us which would justify a finding of professional misconduct. He had, he said, advised his client to admit to professional misconduct because of the difficulty and expense of a long hearing that was in the offing. He assured us that legal advice had been given to Mr. Tulk. He did say that there were facts which were not before us, which he did not mention and would not refer to, which would justify a finding of professional misconduct and which would indicate a point at which Mr. Tulk should have withdrawn from the case. But those facts were never put before Convocation. Indeed, the wording of the admission made by Mr. Tulk bears on this issue:

"Tulk agrees with the foregoing facts and further accepts that the conduct described herein constitutes professional misconduct." (my emphasis)

It is impossible to determine an appropriate penalty in a case where the only facts that are said to justify any penalty at all are kept from us. This is most unsettling and unsatisfactory.

Mr. Tulk has suffered a great humiliation. Any of us would suffer greatly by reason of the publicity which followed the imposition by the Ontario Securities Commission of a two year suspension in trading upon him. But that penalty in itself is meaningless. He can trade in any other jurisdiction in the world. Trading is not a meaningful part of his life. He is not a trader. But it was the only penalty that the Ontario Securities Commission had in its power to impose in a hearing before it. He has suffered real financial disaster and is earning less than his expenses. He has been suspended for 16 months in the sense that he has not practised profitably during that period; but he has practised law for much of that time.

But as the submission of Mr. Brown indicates, there is no real remorse in this case. There is no admission of wrongdoing in any real sense. And Mr. Tulk's acknowledgement of guilt came on the eve that the hearing was to commence, some years after the original complaint. Not a penny has been repaid to the public by him.

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Convocation has been faced squarely with a man who, with knowledge or with wilful blindness, took part in a dishonest scheme which took \$1,226,250 from unsuspecting citizens of this Province. We suspend him from practise for six months. If we were mindful of our obligation to give equal justice to all, he would have been disbarred.

DATED this 10th day of March, 1993.

"Clayton C. Ruby"

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of October 14th, 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 14th of October, 1993 at 9:30 a.m., the following members were present: P. Peters (Chair), N. Graham, M. Hickey, C. Hill, S. Lerner and M. Weaver. Also in attendance were: A. John (Secretary) and J. West.

B.
ADMINISTRATION

1. CONDOMINIUM MANAGERS

In February 1993, the Unauthorized Practice Committee considered a complaint by a member of the Bar concerning the possible unauthorized practice of law by condominium managers. Your Committee received a legal opinion and comments from other members of the Bar about condominium managers who registered liens for unpaid common expenses. Your Committee is seeking information about actual breaches of the statute before authorizing prosecution under Section 50 of the Law Society Act.

2. PARALEGALS INVOLVED IN REAL ESTATE MATTERS

The Unauthorized Practice Committee has, from time to time, dealt with complaints about paralegals who provide real estate services for vendors or purchasers in real estate transactions. Several County and District Law Associations have written to the Law Society requesting action for the alleged breaches of Section 50.

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Your Committee has approved the establishment of a subcommittee to consider the issue and present a report.

ALL OF WHICH is respectfully submitted

DATED the 22nd day of October, 1993

P. Peters
Chair

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

List of Prosecutions.

(page 2)

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of October 14th, 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 14th of October 1993 at 3:00p.m., the following members being present:

S. Elliott (Chair), P. Hennesey, B. Humphrey, J. Lax, B. Luke, R. Manes, F. Mohideen, and Anne Richardson

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

A.
POLICY

No matters to report.

B.
ADMINISTRATION

B.1. CBA REPORT, TOUCHSTONES FOR CHANGE

B.1.1. The CBA Task Force Report, *Touchstones for Change* was released on August 22, 1993 at the CBA National Conference. The Report contains 220 recommendations. Approximately 60 of the recommendations are either directed at law societies or at areas of the profession influenced by law societies. Your Committee considered a document prepared by staff which juxtaposed these approximately 60 recommendations with statements of action taken by the Law Society.

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- B.1.2. Your Committee is of the view that many of the recommendations in the CBA Report should receive attention by this Committee and other Committees. Your Committee notes that a number of the recommendations in the CBA Report are similar to recommendations adopted by Convocation in May 1991 in the *Transitions* report.
- B.1.3. Your Committee appointed a subcommittee consisting of Patricia Hennessey, Barbara Humphrey and Fatima Mohideen to consider the recommendations of the CBA report and formulate a work plan by which your Committee will address the recommendations.
- B.1.4. The Committee Chair will discuss with the Chairs of Equity and Legal Education the respective follow-up responsibilities for each Committee to undertake and the time-frames which the recommendations will be dealt with by each Committee.

C.
INFORMATION

No matters to report.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October 1993

S. Elliott
Chair

THE REPORT WAS ADOPTED

AGENDA - ITEMS TO BE SPOKEN TO

DISCIPLINE COMMITTEE

Mr. Scott spoke to Item C.-C.1. re: Firm Notification of ongoing Complaint Investigations involving an Individual Firm Member.

LEGAL AID COMMITTEE

Ms. Kiteley spoke to Item 1.-1.1 re: Legal Aid Funding and Item 1.-1.3 re: Family Law Pilot Project.

LEGAL EDUCATION COMMITTEE

Mr. Epstein spoke to Item C.-C.2 and Items C.-7, 8 and 9 of the Supplementary Report re: Legal Education Committee Special Policy Meetings.

LEGISLATION AND RULES COMMITTEE

Mr. Cullity spoke to Item A.-A.2. re: Law Society Act: Amendment of Section 36: Suspension for Failure to pay Insurance Deductibles.

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PROFESSIONAL CONDUCT COMMITTEE

Mr. Somerville spoke to Item A.-1. re: Guidelines for Corporate Counsel - Request for Direction.

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Ms. Elliott spoke to Item B.-B.1. re: CBA Report, Touchstones for Change.

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

CLINIC FUNDING COMMITTEE

Meeting of October 20, 1993

Ms. Lax presented Item B.-2a) re: African Canadian Legal Services Clinic for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CLINIC FUNDING COMMITTEE begs leave to report:

Your Committee met on October 20, 1993. Present were: Joan Lax, Chair, Paul Copeland, Jim Frumau, Pamela Giffin, Mark Leach. Also present: Joana Kuras, Clinic Funding Manager.

A.
POLICY

B.
ADMINISTRATION

1. Designation of Funds

Pursuant to s.14 of the Regulation on clinic funding, the Attorney General for Ontario designates the monies required for the purposes of funding community legal clinics. For fiscal year 1993/94, the government has approved a total of \$31,778,800 for the community legal clinics. The designation incorporates a .75% reduction on clinic system funds resulting from the Community Services Sector Agreement reached during the Social Contract negotiations. The government has reserved, pending approval, the amount of \$229,000 for fiscal 1993/94 for an African Canadian legal services clinic.

2. The Clinic Funding Committee recommends that Convocation approve the following decisions:

a) African Canadian Legal Services Clinic

As previously reported to Convocation, the Clinic Funding Committee has been working with members of the African Canadian community to develop a proposal, following the Attorney General's announcement of funding for an African Canadian specialty legal services clinic.

Funding pursuant to the Regulation on clinic funding enables clinics to provide legal services, to encourage access to such services and to provide services designed to promote the legal welfare of a community, on a basis other than fee for service. There are currently 71 clinics established pursuant to the Regulation, of which a number are specialty clinics providing legal services either in a specialized area of law or to a particular client group. Examples of the former include, Metro Tenants Legal Services, Injured Workers' Consultants, Industrial Accident Victims Group of Ontario, and Toronto Workers' Health & Safety Legal Clinic. Examples of the latter include, Aboriginal Legal Services of Toronto, Centre for Spanish-Speaking Peoples, Metro Toronto Chinese & Southeast Asian Legal Clinic, Advocacy Centre for the Elderly, Advocacy Resource Centre for the Handicapped, and Justice for Children and Youth.

The African Canadian legal services clinic will provide a forum from which litigation based on race issues can be addressed and a source through which the legal rights of those affected by racism can be either learned or improved. The clinic will represent clients in precedent-setting cases on issues of systemic racism and plans to work with other legal clinics, the private bar, and all levels of government. The clinic will provide summary advice, referrals, public legal education and undertake law reform and community development activities - all designed to work towards the elimination of systemic racism.

It is anticipated that other clinics, communities and organizations will raise race-based test case litigation issues for the clinic. The establishment of this clinic will not only address an identifiable and urgent need for legal and educational services within the African Canadian community but will be a welcome resource for the community legal clinic system in Ontario.

Therefore, the Clinic Funding Committee is pleased to recommend that Convocation approve the establishment of an African Canadian legal services clinic and funding for this clinic in an amount up to \$229,000 for fiscal 1993/94.

Note: Motion, see page 84

b) Clinic Budgets

Attached as Schedule A is the allocation of funds for community legal clinics for 1993/94, in the total amount of \$26,801,269, which has been reviewed and approved by the Clinic Funding Committee.

c) Supplementary legal disbursements

Pursuant to s.6(1)(m) of the Regulation on clinic funding, the Committee has reviewed and approved applications for supplementary legal disbursements to West End Legal Services in the amount of \$5,000.

d) Court costs

Pursuant to s.10 of the Regulation on clinic funding, the Clinic Funding Committee has approved an application for the payment of court costs from McQuesten Legal & Community Services in the amount of \$400.

C.

INFORMATION

1. Volunteer Articling Students

In response to the Legal Education Committee's request for articling positions for the 1993/94 articling term, six students have now commenced articles on a voluntary basis in community legal clinics in Toronto and elsewhere in Ontario.

ALL OF WHICH is respectfully submitted

DATED this 21st day of October, 1993

J. Lax
Chair

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

Item B-2.b) - Schedule of the allocation of funds for community legal clinics for 1993/94. (Schedule A)

It was moved by Ms. Lax, seconded by Mr. Copeland that Item B.-2a) be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of October 14th, 1993

Mr. Howie presented Item B-2. re: Target for Fees for Convocation's approval.

22nd October, 1993

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 14th of October, 1993 at 10:30 in the morning, the following members being present: K.E. Howie (Chair), M. Somerville (Vice Chair), J.J. Wardlaw (Vice Chair), T.G. Bastedo, D. Bellamy, R.W. Cass, A. Feinstein, S.C. Hill, R.D. Manes, R.W. Murray, P.B.C. Pepper and M.P. Weaver. Also in attendance were D.A. Crosbie, D.E. Crack, M.J. Angevine, D.N. Carey and M. Hart.

R.
ADMINISTRATION

1. FINANCIAL REPORT

The Director presented a highlights memorandum for the General Fund and the Lawyers' Fund for Client Compensation for the quarter ended September 30, 1993. (pages 7-10)

Approved

2. REPORT OF THE BUDGET SUBCOMMITTEE - ESTABLISHMENT OF TARGET FOR FEES

The report of the Budget Subcommittee, setting out its recommendation for the 1994/95 target annual fee, was before the Committee. (pages 11-14)

The Committee was asked to approve this recommendation.

Approved

Note: Motion, see page 90

3. APPOINTMENT OF SALARY & BENEFIT SUBCOMMITTEE

The Chair appointed J. Wardlaw, A. Feinstein and D. Bellamy members of this committee.

Approved

4. AMENDMENTS TO RULE 50

(a) Fees For Foreign Legal Consultants

Background

The Law Society has been licensing Foreign Legal Consultants since November 1988. At present, 16 persons have been licensed. Currently, no fees are charged to Foreign Legal Consultants, because no fees are prescribed in the Rules. However, the practice has been to put applicants on notice that fees will be levied: the application materials contain a statement to the effect that the cost of processing the application and the licence fee are still under review.

Recommendation

On the recommendation of the Admissions Committee, the Finance and Administration Committee approved the following fees for Foreign Legal Consultants:

22nd October, 1993

- A non-refundable application fee of \$1,000 plus GST.
- An annual fee of \$500 plus GST.

(b) Reinstatement Fee For Suspended Members

Background

Rule 50 currently prescribes a Readmission Fee "for readmission to membership in the Society" of \$300. This, of course, is different from a Reinstatement Fee.

On February 11, 1993, the Policy Section of the Discipline Committee recommended a Reinstatement Fee for members who had been suspended "for administrative reasons" (non-payment of an annual fee, an insurance levy or a late filing fee) at the following rates:

- i) Where the fee or levy is paid within ten days of suspension: - a reinstatement fee of \$150
- ii) Where the fee or levy is paid after ten days from the date of suspension: - a reinstatement fee of \$400

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. No figure was mentioned in the Committee's report.

On February 26, 1993, Convocation referred the specific recommendations of the Discipline Committee (for Reinstatement Fees of \$150 and \$400) for further consideration in light of the new policy proposed by the Finance and Administration Committee.

On March 11, 1993, the Finance and Administration Committee considered a proposal to set the reinstatement fee at \$150.

It was reported that a fee of \$150 was adequate both to cover the administrative costs to the Society in processing a member's suspension and reinstatement and to serve as a sufficient penalty to encourage members to avoid suspension.

The Finance and Administration Committee decided to wait until the Special Committee on Requalification had reported before preparing a recommendation for Convocation. Although the Special Committee has not yet reported, it was suggested that it might be timely for the Committee to reconsider the proposal.

Recommendation

The Committee approved the proposal to set the Reinstatement Fee at \$150.

(c) Annual Fees/Parental Leave and Change in Status

The Committee approved a number of minor changes to be made to the wording of the fee provisions in Rule 50 in the interest of clarity and accuracy, and to give authority for certain administrative practices. The principal changes concern policies in respect of pro rata fees for members admitted to membership after the beginning of the fiscal year, pro rata fee reductions and increases for members whose status alters during the course of a fiscal year, and fees for temporary members. A draft of the proposed amendments to Rule 50 together with explanatory notes were before the Committee. (pages 15-22)

(d) Miscellaneous Fees

Background

Miscellaneous fees under Rule 50 were last updated in 1986.

To assist the Committee in deliberating on the adequacy of these fees, a study was done for two of the items.

Transfer application fee: Approximately 40 Transfer Applications for Admission are received per year. As can be seen from the attached schedule the total cost for admission to the Ontario Bar is \$911, and costs range from \$200 in Nova Scotia to \$1,520 in British Columbia. An increase from \$101 to \$125 will match the increase in the Application Fee for becoming a student member which was approved by the Finance and Administration Committee in April 1993.

Certificate of standing: Approximately 450 Certificates of Standing are issued per year. On average, it takes about 1 hour of staff time to complete. Therefore a rate of \$50 is reasonable considering \$25 for salary and benefit cost and approximately like amount for overheads.

Recommendation

The Committee approved the following changes to fees under Rule 50 :

	Current Fee	Proposed Fee
Transfer application fee	\$101	\$125
Special petitions - name changes	10	25
Special petitions - legal education	25	50
Certificate of standing	25	50
Transcript of class standing and rating in individual subjects	25	50
Additional copies	5	10
Duplicate diploma	25	50

These changes have been referred to the Legislation and Rules Committee with a request that detailed amendments of Rule 50 be presented to Convocation for approval.

Note: Motion, see page 90

5. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 11 members who have not complied with the requirements respecting annual filing and/or who have not paid their late filing fee.

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

The Committee was asked to recommend that the rights and privileges of the these members be suspended on October 22, 1993 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see page 91

6. SUSPENSION OF MEMBERS - ARREARS OF ANNUAL FEES

There are many members who have not paid the first instalment of the 1993/94 annual fees which were due July 1, 1993. Two notices have been sent.

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The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on October 22, 1993 effective November 1, 1993 if the annual fees remain unpaid on that date.

Approved

Note: Motion, see page 91

7. SUSPENSION OF MEMBERS - ERRORS AND OMISSIONS LEVY

There are many members who have neither paid their Errors and Omissions Insurance Levy nor filed a claim for exemption for the period July 1 to December 31, 1993. Two notices have been sent.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on October 22, 1993 effective November 1, 1993 if the members have not complied with the requirements of the Errors and Omissions Insurance Plan on that date.

Approved

Note: Motion, see page 91

8. MEMBERSHIP UNDER RULE 50

(a) Retired Members

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

James Francis Dunn	Peterborough
Donald Frank Halstead Hardacre	Etobicoke
Frederick Arthur Meredith Huycke	Toronto
Russel Charles O'Neal	Hamilton

(b) Incapacitated Members

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

Joseph Harris Abramsky	Willowdale
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Their applications are in order and the Committee was asked to approve them.

Approved

9. RESIGNATION - REGULATION 12

The following members have applied for permission to resign their membership in the Society and have submitted Declarations in support. These members have requested that they be relieved of publication in the Ontario Reports.

- (a) Carey Nicholas Nieuwhof of Toronto was called to the Bar on February 9, 1993 and has never practised law since his call.
- (b) Leslie Ann Pearl of Toronto was called to the Bar on March 31, 1989 and has never practised law since her call.

22nd October, 1993

- (c) Elizabeth Ann Tutiah of Vancouver, British Columbia was called to Bar on February 7, 1992 and has never practised law in Ontario since her call.
- (d) Iain Robert Mant of Vancouver, British Columbia was called to the Bar on March 30, 1990. He practised with the firm Tory, Tory, DesLauriers & Binnington until November 30, 1992 and all clients' books and records remain in possession of the firm. He is not aware of any claims made against him.
- (e) David Anthony Knox of Vancouver, British Columbia was called to the Bar on April 14, 1978. He practised with the firm Borden & Elliot until 1981 and all clients' books and records remain in the possession of the firm. He is not aware of any claims made against him.
- (f) Peter Fruchter of Toronto was called to the Bar on March 22, 1991. He practised law, as a sole practitioner, only for the period June to August 1991. All clients' matters have been completed or transferred to other solicitors to clients' satisfaction. He is not aware of any claims made against him.

Their Declarations are in order and the Committee was 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:

October 6, 1993	Osgoode Alumni Barristers' Lounge
October 6, 1993	ARCH Awards Night Convocation Hall
October 14, 1993	Portrait unveiling Convocation Hall
October 21, 1993	Lawyers' Club Convocation Hall
October 23, 1993	Phi Beta Phi Convocation Hall
October 28, 1993	Osgoode Society Convocation Hall

22nd October, 1993

November 3, 1993

Osgoode Law School
Convocation Hall

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 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 October 14, 1993 re: Financial Highlights for September 1993.
(pages 7 - 10)
- Item B.-2. - Report of the Budget Subcommittee re: Establishment of Target for Fees.
(pages 11 - 14)
- Item B.-4.(c) - Memorandum from Mr. Andrew Brockett to Mr. David Crack dated September 30, 1993 re: Finance and Admission Committee: Proposed amendments to Rule 50: Approval in principle requested.
(pages 15 - 22)
- Item B.-4.(d) - Fee Comparisons. (page 23)

It was moved by Mr. Somerville, seconded by Mr. Howie that Convocation adopt the Committee's recommendation for the 1994/95 target annual fee.

Lost

It was moved by Ms. Kiteley, seconded by Mr. Scott that no fee target be set at this time.

Lost

It was moved by Ms. Bellamy, seconded by Mr. Manes that the fee target be approved at not more than \$1,132.

Carried

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Convocation took a brief recess at 11:20 a.m. and resumed at 11:30 a.m.

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FINANCE AND ADMINISTRATION COMMITTEE - (cont'd)

Mr. Howie present Item B-4. re: Amendments to Rule 50 for Convocation's approval.

It was moved by Mr. Howie, seconded by Mr. Feinstein that Item B-4. be adopted.

Carried

22nd October, 1993

Mr. Howie presented Items B-5., 6. and 7. re: Suspensions for Convocation's approval.

It was moved by Ms. Palmer, but failed for want of a seconder that the reinstatement fee for suspended members be delayed until January 1st, 1994.

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

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

It was moved by Mr. Howie, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due be suspended from October 29, 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

MOTION TO SUSPEND - FAILURE TO PAY ANNUAL FEES

It was moved by Mr. Howie, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid the first instalment of the annual fee for 1993/94 which was due on July 1, 1993 be suspended from November 1, 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

MOTION TO SUSPEND - FAILURE TO PAY E & O INSURANCE LEVY

It was moved by Mr. Howie, seconded by Mr. Feinstein THAT the rights and privileges of each member who has neither paid the Errors and Omissions Insurance levy which was due on July 1, 1993 nor filed an approved application for exemption from coverage be suspended from November 1, 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 Convocation file for lists)

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INSURANCE COMMITTEE

Meeting of October 14th, 1993

Mr. Campbell presented Item 2.a) re: Movement of Program Management into LPIC for Convocation's approval.

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 14th of October, 1993 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Hickey, Bastedo, Cass, Howie, Lerner, McKinnon, Scace, Wardlaw, Feinstein and Ms. Elliott.

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

ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director reported that the net cost of new claims reported during the first 9 months of 1993 is \$34,358,412 compared to \$32,283,266 for the same period in 1992, an increase of \$2,075,146. The number of newly reported claims increased from 2,381 in 1992 to 2,867 in 1993. See Appendix "A".

2. OUTSTANDING ITEMS

a) Movement of Program Management Into LPIC

Under the terms of a management and service agreement between the Law Society and LPIC, the Law Society is responsible for the day-to-day administration of the Mandatory Professional Liability Insurance Program including claim investigation and settlement. In September, Convocation adopted the Committee's recommendation to approve in principle, moving the administrative component of the Professional Liability Insurance operations into LPIC. The Director reported further on this subject at the meeting, advising your Committee that the legal opinion obtained on the question of tax considerations concludes that such a change would not impact the tax status of the Law Society or LPIC. Your Committee recommends that the Director proceed with the necessary arrangements to move the administrative component of the Mandatory Program into LPIC. The change would be scheduled to be effective January 1, 1994 or as soon as practical thereafter.

Note: Motion, see page 93

b) Search Committee

Lin Whitman will be retiring from his position as Director of Insurance at the end of 1993. A Subcommittee consisting of Messrs. Campbell, Howie, Feinstein, Crosbie and Whitman has been created to search for a new Director of Insurance. Consultants have been retained to advance the process of identifying candidates suitable for consideration by the Subcommittee.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1993

C. Campbell
Chair

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

- Item 1. - Comparison of Claims Activity 1993/1992 for first 9 months - January 1 to September 30. (Appendix "A")

22nd October, 1993

It was moved by Mr. Campbell, seconded by Mr. Feinstein that Item 2.a) would be brought back to Convocation with a definite plan for approval.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

LEGISLATION AND RULES COMMITTEE

Meeting of October 14th, 1993

Mr. Cullity presented A.-A.1. re: Benchers Elections: Implementation of Scheme of Regional Elections 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 14th of October, 1993, at 12:00 noon, the following members being present: M. Cullity (Chair), R. Cass, C. Hill, the Hon. A. Lawrence, S. Thom.

Also present: A. Brockett, E. Spears

A.
POLICY

A.1. BENCHER ELECTIONS: IMPLEMENTATION OF SCHEME OF REGIONAL ELECTIONS

A.1.1. On June 25, 1993, Convocation directed the Legislation and Rules Committee to prepare the necessary amendments to the *Law Society Act*, regulations and rules to implement the scheme of regional election of benchers adopted by Convocation in March 1993.

A.1.2. At its meeting on September 9, 1993, the Committee struck a subcommittee consisting of Stuart Thom and Maurice Cullity. The subcommittee was instructed to identify any issues that require to be resolved before the necessary amendments to the *Law Society Act*, the regulations and rules can be drafted and to prepare draft amendments to the Act. Alternative drafts of the statutory amendments have been prepared and were discussed at the meeting. Members of the Committee have been requested to provide their comments in writing to the intent that, if possible, the Committee will be in a position to make recommendations to Convocation in November.

A.1.3. The subcommittee also brought to the Committee's attention the following issue:

What should happen if the regionally-elected benchers in region X moves his/her address outside that region during his/her term as benchers?

A.1.4. Your Committee considered the matter and recommends that such a benchers should lose his/her status as the regionally-elected benchers.

- A.1.5. If the Committee's recommendation is adopted, and the regionally-elected benchner moves out of the region, the following consequences would ensue:
- A.1.5.1. A vacancy would be created, to be filled by a person who meets the qualification to be the regionally-elected benchner for that region.
- A.1.5.2. The former regionally-elected benchner may be entitled to continue as a benchner at large, displacing another benchner elected at large but with fewer votes.
- A.1.6. Your Committee seeks directions from Convocation as to whether regionally-elected benchner who moves his/her address outside that region during his/her term as benchner should lose his/her status as the regionally-elected benchner.

Note: Motion, see page 95

A.2. LAW SOCIETY ACT: AMENDMENT OF SECTION 36: SUSPENSION FOR FAILURE TO PAY INSURANCE DEDUCTIBLES

A.2.1. Recommendation:

- A.2.1.1. That in section 36 of the *Law Society Act*, after the word "Society", the words "or the deductible portion of any insurance claim payment payable under the Society's professional liability insurance plan" be inserted and set off by commas, so that section 36 will read:

If a member fails to pay any fee or levy payable to the Society, or the deductible portion of any insurance claim payment payable under the Society's professional liability insurance plan, within four months after the day on which payment is due, Convocation may by order suspend the person's rights and privileges as a member for such time and on such terms as it considers proper in the circumstances.

(Added text underlined)

A.2.2. Explanation

A.2.2.1. At present, section 36 reads:

If a member fails to pay any fee or levy payable to the Society within four months after the day on which payment is due, Convocation may by order suspend the person's rights and privileges as a member for such time and on such terms as it considers proper in the circumstances.

A.2.2.2. Currently, then, members may be suspended only for non-payment of a fee or levy.

A.2.2.3. On September 24, 1992, Convocation adopted the recommendation of the Finance and Administration Committee that section 36 be amended to include members' deductibles as a financial obligation for which members may be suspended if such deductibles are not paid within four months of the due date.

B.
ADMINISTRATION

No items to report

C.
INFORMATION

C.1. DISCIPLINE MANAGEMENT PROCEDURES

C.1.1. On June 25, 1993, Convocation directed the Legislation and Rules Committee to prepare, in consultation with the Discipline Committee, the necessary amendments to Regulation 708 to implement the Discipline Management Procedures.

C.1.2. Your Committee was advised by the staff that a first draft of amendments to the Regulation has been prepared and is being reviewed and refined by the staff.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1993

M. Cullity
Chair

It was moved by Ms. Elliott, seconded by Mr. Scott that Item A.-A.1. re: Bencher Elections be referred back to the Committee for further information.

Carried

It was moved by Ms. Kiteley, seconded by Mr. Cullity that no action be taken with regard to the issue of benchers moving.

Not Put

It was moved by Mr. Hill, seconded by Ms. Peters that the present method of filling vacancies be continued.

Not Put

It was moved by Mr. McKinnon, seconded by Mr. Brennan that where a regionally elected bencher moves out of the region, he/she must resign and be replaced by a candidate having the next highest number of votes in the region.

Not Put

THE BALANCE OF THE REPORT WAS ADOPTED

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CONVOCATION ADJOURNED FOR LUNCHEON AT 12:40 P.M.

The Treasurer and Benchers had as their guests for luncheon Ms. Gillian Reece and Mr. Manus McMullan, Fox Scholars and Mr. Justice David Malcolm.

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22nd October, 1993

CONVOCATION RECONVENED AT 2:30 P.M.

PRESENT:

The Treasurer, Bastedo, Bellamy, Brennan, R. Cass, Copeland, Curtis, Elliott, Epstein, Feinstein, Goudge, Graham, Hickey, Lax, Lawrence, Lerner, McKinnon, Manes, Mohideen, Moliner, D. O'Connor, Palmer, Peters, Ruby, Scott, Sealy, Somerville, Thom and Weaver.

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

LEGAL AID COMMITTEE

Meeting of October 14th, 1993

Mr. Copeland asked that Item 1.-1.2 re: Federation of Law Societies-Statement of Principles, be put over to the Regular Convocation in November.

22nd October, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of October, 1993, the following members being present: Fran Kiteley, Chair, Messrs. Bond, Brennan, Copeland, Ms. Curtis, Mr. Durno, Ms. Fuerst, Ms. Kehoe, Mr. Lalande, Ms. Peters and Mr. Petiquan.

1.
POLICY

1.1 LEGAL AID FUNDING

In earlier reports the Legal Aid Committee has indicated the active steps which are under-way to secure the necessary funding for the fiscal year ending March 1994. Earlier reports have indicated that senior Plan officials continue to monitor the situation on a weekly basis and that negotiations with the Deputy Attorney General are ongoing. The Legal Aid Act requires that the Attorney General provide to the Plan funds needed to carry on its statutory obligation. At every opportunity, the statutory responsibility of the Attorney General to properly fund the Plan is reinforced.

The first six months of the fiscal year have passed. At the Legal Aid Committee meeting on October 14, 1993, the statistics for the five months ended August 31, 1993 were available and subsequently the statistics for the year ended September 30, 1993 have become available. Copies of both statements are attached as Schedule "A". The statistics reflect that demand for Legal Aid (as represented in applications for Certificates and in Certificates issues) is less than had been forecasted. Overall, demand is 5.5% less than forecasted.

On the other hand, the number of accounts submitted by counsel appears to have increased. There are many likely reasons associated with the increased number of accounts, most notably, the need in the recession for lawyers to be paid at more frequent intervals.

As a result of the negotiations with the Attorney General and the constant monitoring of finances, the Legal Aid Committee remains optimistic that the necessary funds will be available for the fiscal year. However, the Legal Aid Committee recognizes the necessity of being fiscally responsible and exploring and considering means by which funding issues can be addressed.

The Legal Aid Committee had an extensive discussion on various options to increase revenue and to reduce cost. The Legal Aid Committee made no decisions on October 14, 1993. The Legal Aid Committee deferred to the November meeting a further discussion of the various revenue enhancement/cost reduction options. By the time of the November Legal Aid Committee meeting, senior administration staff will have compiled data (to the extent that it is available) reflecting upon the impact of various options.

There is a wide range of options being considered as possibilities. No single option has any greater attractiveness than any other. All options are undesirable. The following is a summary of the options contained in the Agenda for the Legal Aid Committee in October and supplemented as a result of the discussion at the October meeting:

Revenue Enhancement

- (a) Whether revenue from the Law Foundation might be increased by increasing the percentage dedicated to Legal Aid, by renegotiating the interest rate paid by the banks, by implementation of the pooling arrangement previously discussed, and by access to some of the reserve of the Law Foundation.
- (b) Whether an increased Legal Aid levy should be considered beyond the \$292 paid by the average member in the current fiscal year. If an increase is considered, consideration will also be given to whether it ought to be a differential increase with less payable by those members of the profession who more frequently accept Legal Aid Certificates.

Cost Reduction

The Legal Aid Committee previously concluded that elimination of service should be the last option considered. In the category of potential coverage changes are the following possibilities:

- (a) in summary conviction and hybrid offences (such as communicating for prostitution and theft under) a block fee of \$417 is paid for trial or withdrawal; and \$277 block fee for a guilty plea. Currently, there is an additional fee permitted for a bail hearing. Consideration will be given to eliminating the additional fee in order that any services rendered in connection with the bail hearing would be included in the existing block fee, or the bail hearing could be done by Duty Counsel;
- (b) there are certain categories of matters where choice of counsel may not be essential. Examples include some young offender matters (particularly those where counsel is ordered by the Court in circumstances where, but for the accused being a young offender, a Certificate would not be granted for the offence; undefended divorces where there are no issues of corollary relief; and some parole hearings). Consideration will be given to the possibility of adopting the English and Manitoba approach where a specified number of such cases are allocated to a particular individual or firm;
- (c) currently, the role of criminal duty counsel varies from one locale to another. Consideration might be given to making the role more uniform as a result of which the Duty Counsel would take on some modest additional responsibility;
- (d) the Federal/Provincial Agreement requires that a Certificate be given where an accused is otherwise financially eligible and the accused is charged with driving offences where the Crown proceeds summarily, in circumstances where there is a possibility of incarceration. Consideration might be given to seeking an amendment to the Federal/Provincial Agreement to permit Legal Aid to decline to issue a Certificate;

- (e) currently, family law Certificates are paid primarily on a hourly basis and criminal Certificates are paid on a block fee basis or an hourly fee for preparation and daily or half day counsel fee. The approaches to hourly rates and block fees have changed from time to time historically. Consideration might be given to making the approach to remuneration for all services rendered more consistent;
- (f) the Provincial Director has asked all Senior Managers and all Area Directors of the Plan some months ago to review their departmental/local budgets to ascertain whether there were prospects for administrative cost savings. The Provincial Director will report on the outcome of these efforts at the next meeting.

Other Options

- (a) If there were a very modest short-term financial issue, whether the Legal Aid Committee should recommend that short-term borrowing arrangements be made. The Legal Aid Act does not authorize any form of borrowing by the Legal Aid Plan and consequently if this option were pursued, it would involve the Legal Aid Committee requesting that the short-term borrowing arrangements be made by the Law Society.
- (b) In addition to the foregoing options, the Legal Aid Committee was reminded of the policy with respect to payment of solicitors' accounts. Some years ago, the Legal Aid Plan adopted time standards within which accounts should be approved and then paid. The approach taken by the Legal Aid Committee has been that since the remuneration paid to lawyers is modest, considerable efforts should be made to ensure timely payment.

Several years ago, Convocation approved the recommendation of the Legal Aid Committee to the effect that 90% of standard form accounts should be paid within thirty days and 80% of regular accounts should be paid within sixty days of receipt by Legal Aid. Currently, the Legal Aid Accounts Department is significantly ahead of those time standards. The Legal Aid Committee will give consideration to whether accounts should be paid in a manner more consistent with the adopted standards.

Benchers are invited to communicate their thoughts on these and any other available options by writing or speaking with any of the Bencher members of the Legal Aid Committee.

It is anticipated that these and any other options that arise in the meantime will be discussed at length at the Legal Aid Committee meeting in November and a full report will be made at Convocation thereafter.

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. It was moved by Mr. Lalonde and seconded by Mr. Bond that the Statement of Principles of the Federation of Law Societies be adopted (with modest amendments) as in Schedule "B".

Note: Item deferred to November

1.3 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. 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.

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

- (a) the recommendation that a Pilot Project designed to provide service in the paper-intensive non controversial areas of uncontested divorces and adoptions;
- (b) the recommendation that a fully integrated family law service be provided to eligible women;
- (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).

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 Law Centre would offer a service only to women. Furthermore, the existing Law Society Rules of Professional Conduct prohibiting discrimination appeared to be in conflict with the concept of a Women's Law Centre. The revisions to the Rules of Professional Conduct enable initiatives such as the Women's Law Centre but those revisions were only at the draft stage.

Due to the lengthy Agenda at the June meeting and the appearance of potential consensus, the Chair chose to defer the formality of approving the resolution in the expectation that it might be accomplished by facsimile transmission prior to Convocation in June.

Between Committee Day and Convocation in June, the Pilot Project Steering Committee met. The Deputy Attorney General received the Report of the Pilot Project 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 Design Committee;
- (b) the Deputy Attorney General wanted to explore with Treasury Board the feasibility of implementing the Report with and without the third model.

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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 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.

The projects proposed by the Design Committee were as set out in Chart (A) attached as Schedule "C". At a meeting on October 4, 1993, the Pilot Project Steering Committee was advised that the Attorney General was going to recommend to the Treasury Board that the government fund the projects set out in Chart B (Schedule "C") namely:

- a women's law centre outside Toronto
- a limited service office (for uncontested divorces and adoptions)
- an office which would test the third model

On October 5, 1993, the Plan was advised that Treasury Board had granted the Attorney General's request as on Chart B (Schedule "C"). Written confirmation was received from the Deputy Attorney General on October 13, 1993 and is attached as Schedule "D".

- (1) Is there a consensus that the Women's Law Centre is an appropriate delivery model?
- (2) Will the Committee only endorse such a centre if it is located in Toronto?
- (3) Is the Legal Aid Committee prepared to be involved in the development of a Family Law Staff Office as described in Chart B (Schedule "C")?
- (4) Should the Committee reconsider in full the subject of Family Law Pilot Projects in view of the changed circumstances and the different composition of the Legal Aid Committee.

In view of the assertion by the Attorney General that two of the three recommendations in the Report of the Design Committee would not be followed, the members of the Legal Aid Committee agreed to defer further consideration of the Report pending an opportunity to meet with the Attorney General and Deputy Attorney General to further elaborate upon the reasons contained in the letter dated October 13, 1993 (Schedule "D"). The Provincial Director reported that he understood from the Deputy Attorney General the enthusiasm on the part of the Attorney General and the Deputy Attorney General for attending at the meeting of the Legal Aid Committee for that purpose and was confident that such a meeting could be arranged in November. The Legal Aid Committee will further consider its position with respect to the Design Committee Report after having an opportunity to meet with the Attorney General and the Deputy Attorney General.

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2.
ADMINISTRATION

2.1 ONTARIO LEGAL AID PLAN - STATEMENT OF RECEIPTS AND DISBURSEMENTS FOR FIVE MONTHS ENDED AUGUST 31, 1993

The Statement of Receipts and Disbursements for Five Months ended August 31, 1993 is attached hereto and marked as Schedule "A". (September is also attached).

2.2 AREA COMMITTEES - APPOINTMENT AND RESIGNATIONS

APPOINTMENTS

Cochrane

Gregory B. Chornyj, solicitor

Grey

Dr. Ruth V. Kirk, counsellor and therapist

Manitoulin Island

Patricia Ladouceur, teacher's aid

York Region

Stephen J. Cudas, solicitor

Donald McKee, solicitor

Kathryn H. Daly, solicitor

RESIGNATIONS

Cochrane

Ron Minard

Grey

Audrey Jenkinson

Manitoulin and Sudbury

Daniel Gingras

ALL OF WHICH is respectfully submitted

DATED this 21st day of October, 1993

F. Kiteley
Chair

22nd October, 1993

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

- Item 2.-2.1 - Statement of Receipts and Disbursements for Five Months ended August 31, 1993. (Schedule "A", pages 8 - 10)
- Item 1.-1.2 - Statement of Principles of the Federation of Law Societies. (Schedule "B", pages 11 - 12)
- Item 1.-1.3 - Projects Proposed by the Design Committee. (Schedule "C", page 13)
- Item 1.-1.3 - Letter from Mr. George Thomson, Deputy Attorney General to Ms. Frances Kiteley dated October 12, 1993. (Schedule "D", pages 14 - 16)

THE REPORT WITH THE EXCEPTION OF ITEM 1.-1.2 WAS ADOPTED

PROFESSIONAL CONDUCT COMMITTEE

Meeting of October 14th, 1993

Mr. Somerville presented Item A.-2. re: O.I. Employee Leasing Inc. for Convocation's approval.

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 14th of October, 1993 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Braid (non-bencher), Cullity, Feinstein and Moliner.

A.
POLICY

1. GUIDELINES FOR CORPORATE COUNSEL -
REQUEST FOR DIRECTION

At the September meeting of the Committee a set of guidelines prepared by a group of corporate counsel was tabled. They were also attached to the Committee's report to Convocation.

The Federation of Law Societies has asked the various law societies to offer their input on these guidelines by the middle of November.

The guidelines, together with correspondence from Denise Bellamy to Claude Séguin, the Executive Director of the Federation and to the Committee's Secretary, are attached (numbered 1 - 6).

The Executive Director of the Canadian Corporate Counsel Association, Robert Jones, Q.C., and the General Counsel of the CIBC, Mr. Derek Hayes, had been invited to attend the meeting. Mr. Hayes sent his regrets but Mr. Jones was present.

The Committee concluded that a special working group should be created that will report to the Special Committee on the Review of the Rules of Professional Conduct.

The Federation of Law Societies will be advised as to what the Professional Conduct Committee is recommending be done.

The Committee asks Convocation to adopt this approach.

2. O. I. EMPLOYEE LEASING INC. AND THE PAYING
OF ARTICLED STUDENTS' SALARIES AND THOSE
OF EMPLOYED LAWYERS TO THIS COMPANY BY
THE EMPLOYER LAW FIRM

This matter has been considered in 1992 and in 1993 by the Professional Conduct Committee.

The Committee and Convocation in February 1992 saw no problem in the articling student's salary being paid to O. I. Employee Leasing Inc. They thought differently with respect to the employed lawyer. For the employee lawyer to be paid in this fashion would in essence mean that he could obtain the benefits of incorporation which are not open to other members of the profession and that the consulting company would thereby be practising law.

The lawyer for O. I. Employee Leasing Inc., Mr. James Fyshe, has in the following letter asked that this matter be reopened.

I am a solicitor acting for O. I. Employee Leasing Inc.

My client recently received a copy of excerpts of Minutes from the Professional Conduct Committee meetings held in February of this year dealing with the above-mentioned issue. It would appear that the committee recommended to Convocation that the practice of leasing employees qualified as lawyers not be permitted as it would constitute a violation of section 50 of the Law Society Act.

My client has not been advised as to whether this opinion was adopted by Convocation and does not know whether the leasing of employees qualified as lawyers has been disapproved by this body. Further, my client, being directly affected by any decision made, was not given notice of the inquiry by the Law Society and had no opportunity to make submissions on the matter. Since the Professional Conduct Committee had a copy of one of my client's contracts when it considered the issue, there can be no question that O. I. Employee Leasing Inc.'s interest was apparent to the committee members and my client ought to have been informed of the deliberations.

A reading of the Minutes makes it clear that input from my client was necessary, since there are misunderstandings about the leasing concept held by the committee. For example, the committee assumed that the contracting law firm was paying the lawyer's salary to the consulting corporation. This is not the case, as the law firm would be paying a placement fee and not salary.

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My client fails to see how they could be considered as practising law when the legal work is being performed by the qualified professional employee. The contracts with the employee and the placement agency deal with the issues of liability, that insurance is in place, and the employee is accountable to the Law Society for his/her conduct as a professional. Certainly there is a parallel here to the circumstances of "in house" counsel and to any employees of management firms incorporated to run large legal practices.

There are other matters which should be brought to the attention of Convocation in relation to this matter which we are unable to address in this correspondence as the full scope of the committee's deliberations is not known to us.

In closing then, we would appreciate knowing the present status of this issue from the perspective of the Law Society and what instructions should be given to our employees who are lawyers. Secondly, we would request that Convocation revisit this issue to allow proper input from my client, and that a final decision disapproving employee leasing be reserved until such input has been secured.

We look forward to your early response to this correspondence.

Attached is a copy of the item from the Committee's April 1993 report to Convocation when this issue was last addressed (numbered 7 - 19).

Mr. Fyshe was present to discuss the matter with the Committee.

The Committee noted that, in addition to the contravention of section 50 of the *Law Society Act*, the proposed payment of the lawyer's salary to O.I. Employee Leasing Inc. was in contravention of Rule 19 (Practice by Unauthorized Persons) that reads "The lawyer should assist in preventing the unauthorized practice of law".

The Committee acknowledged the thoroughly laudable efforts of O.I. Employee Leasing Inc. to advance employment opportunities for aboriginal Canadians. However, the reality of the arrangement still meant that their company would be practising law by virtue of the fiscal arrangement whereby the salary of the associate lawyer would be paid by the law firm to the corporation which in turn would pay it to the associate.

The Committee asks Convocation to confirm its position taken in April 1993 in response to a recommendation by the Committee.

Note: Motion, see page 107

3. TALKING YELLOW PAGES - REQUEST FOR ADVICE

Tele-Direct which publishes the Yellow Pages has been approaching lawyers in Mississauga, Brampton and Oakville to see if they would like to sponsor a legal subject, information about which can be obtained by dialing certain numbers from a touch tone telephone.

Set out is the letter from Teresa Deakin at Tele-Direct:

Cindy Kennedy has asked me to make your professional association aware of a new advertising opportunity that Tele-Direct will be testing in the February 1994 issues of the Mississauga, Brampton and Oakville Yellow Pages directories.

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We will be approaching lawyers in these areas offering them the opportunity to be the exclusive sponsor of helpful consumer information related to an area of legal practice concerns. This information will be made available to the public on our Talking Yellow Pages service - a free service that presently provides news, weather, sports reports, horoscopes, etc., accessible via touch-tone telephones.

An example of this new concept that exists in the Calgary directory is attached. When a caller enters one of the 4-digit codes for a legal topic, they will first hear "it is brought to them by Mr. Smith". Then at the end of that topic they will have the option to "press 1 to be directly connected to Mr. Smith's office". Nothing will appear in print about the sponsoring professional.

Please call me if you would like any further details or have any questions.

Attached is a copy of a list of legal subjects together with a copy of a brochure (numbered 20 - 24).

Ms. Deakin was present to explain how the system would operate. Basically, only one law firm or lawyer would be approached. During the discussion the issue of "steering" was discussed. In this regard reference was made to paragraph 5(f) under Rule 12 which reads as follows:

The lawyer shall not:

- (f) arrange for or encourage anyone (e.g., a real estate agent) to make a practice of recommending to any person that the lawyer's services be retained;

The Committee was particularly concerned that the opportunity to advertise would be restricted to one lawyer in each area of practice. This makes the proposal unacceptable. Were all lawyers in the community given the opportunity to participate (provided, of course, they paid the relevant fees), there would not be a problem.

The Committee asks Convocation to adopt this position.

Note: Motion, see page 107

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1993

M. Somerville
Chair

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

- Item A.-1. - Law Society Guidelines for Corporate Counsel. (pages 1 - 6)
- Item A.-2. - Excerpt from the Minutes of Convocation of February 1992. (pages 7 - 19)
- Item A.-3. - Copy of list of legal subjects of new advertising system. (pages 20 - 24)

22nd October, 1993

It was moved by Mr. Somerville, seconded by Mr. O'Connor that Item A.-2. be adopted.

Carried

Mr. Somerville presented Item A.-3. re: Talking Yellow Pages for Convocation's approval.

It was moved by Mr. Somerville, seconded by Mr. McKinnon that Item A.-3. be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meeting of October 14th, 1993

Mr. Feinstein presented Item A.-A.1. re: Rules of Procedure for the Annual Meeting for Convocation's approval.

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 14th of October 1993 at 8:00am, the following members being present:

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

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

A.
POLICY

A.1. RULES OF PROCEDURE FOR THE ANNUAL MEETING

A.1.1. In May 1993, your Committee appointed a subcommittee to report on appropriate rules of procedure for the Annual General Meeting of the Law Society. The members of the subcommittee are Abraham Feinstein and Susan Elliott. The full report of the subcommittee is found at Attachment A to this Report.

A.1.2. The recommendations of the Subcommittee on the Rules of Procedure for the Annual Meeting have been excerpted here:

1. Rule 52 be amended, as attached (Attachment B), for the reasons set out in the consultant's report.
2. *Bourinot's Rules of Order* be the standard authority for all meetings.
3. Rulings of the Chair be subject to appeal save for any matter which is the subject of investigation by the society as set forth in the draft Rule.

4. The Corporations Act continue to apply and the Law Society not be exempted from its provisions.
5. Motions from the floor of the Annual Meeting be accepted without a requirement of prior notice provided they relate to the work of the Society and the matter then being debated, as per the draft Rule.
6. Subrule 52(6), which currently reads: "Any motion to be made at an annual meeting must directly relate to the work of the Society" be amended to delete the word "directly".
7. The society provide a copy of *Bourinot's Rules of Order* to every Benchers and make ten copies available for the information of members at the Annual Meeting. (The retail price of *Bourinot's* is \$9.95. However, McClelland & Stewart discount the retail price by 35 percent when 50 to 99 copies of the book are ordered. It is estimated that the Law Society will have to purchase 75 copies of *Bourinot's* to implement recommendation 8.2.8. This would cost the Law Society \$519.01 (G.S.T. included).)
8. If this report is adopted by Convocation in October 1993 the proposed changes to Rule 52 should be made available to members for information and comment, at the 1993 Annual Meeting and circulated to the Standing Committees of Convocation for information and comment; Rule 52 should not be changed until such time as the Committee has had an opportunity to review any comments and report back to Convocation as to any further changes, additions, deletions or refinements to Rule 52 after such consultation has taken place. It is anticipated that through this process, the revised Rule 52 would be in effect for the 1994 Annual Meeting.

Appointment of Auditor

- A.1.3. In its report, the Subcommittee raised the issue of whether the annual meeting should appoint the auditor.
- A.1.4. 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.
- A.1.5. Your Committee understands that the convention has been for Convocation to appoint the auditor.
- A.1.6. Your Committee has considered the matter of the appointment of the auditor and has determined that, as between the annual meeting and Convocation, Convocation, as the governing body of the Law Society is the more appropriate body to appoint the auditor.
- A.1.7. Your Committee therefore recommends:
- A.1.8. That Rule 6 of the Rules made under subsection 62(1) of the *Law Society Act* be amended to provide that the auditor shall be appointed by Convocation.

B.
ADMINISTRATION

B.1. SUBCOMMITTEE ON THE ROLE OF THE LAW SOCIETY

B.1.1. The final report of the Subcommittee on the Role of the Law Society will be considered by your Committee at its meeting on November 11, 1993. The report will be prepared for circulation prior to the next meeting of the Committee. The County and District Plenary Meeting is being held on November 10 and 11, 1993 at Osgoode Hall.

B.1.2. Your Committee seeks the approval of Convocation for circulating the final report of the Subcommittee on the Role of the Law Society to the County and District Law Presidents and the President of the County of York Law Association prior to the November 11 Committee Day. This means that County Law Presidents will receive the report before most benchers who will receive it with their November Convocation materials. Your Committee is of the view that the discussion of the report at Convocation will benefit

C.
INFORMATION

No matters to report.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October 1993

L. Brennan
Chair

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

Item A.-A.1.1. - The Subcommittee on Rules of Procedure for the Annual Meeting.
(Schedule A - A-12)

It was moved by Mr. Feinstein, seconded by Mr. Copeland that the report be received for information, comment and circulation.

Carried

AGENDA - ADDITIONAL MATTERS REQUIRING DEBATE AND DECISION BY CONVOCATION

SPECIAL COMMITTEE TO REVIEW THE RULES OF PROFESSIONAL CONDUCT

Mr. Somerville presented the Report of the Special Committee to Review the Rules of Professional Conduct for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE TO REVIEW THE RULES OF PROFESSIONAL CONDUCT begs leave to present the following progress report:

1 TERMS OF REFERENCE

- 1.1 The Special Committee to Review the Rules of Professional Conduct was established by Convocation on November 27, 1992, with the following terms of reference:

To co-ordinate a review of the Rules of Professional Conduct and to make recommendations to Convocation in answer to the following questions:

1. *In respect of each of the existing rules*

1.1. *Does the rule set forth a standard of conduct that is appropriate for lawyers as members of a self-governing profession when considered from the standpoints of*

- a. *the public; and*
- b. *the legal profession?*

1.2. *If the rule does not set forth an appropriate standard, what should the standard be?*

1.3. *Are the structure and wording of the rule adequate to communicate the appropriate standard and to give guidance to members of the profession?*

1.4. *If the structure and wording of the rule are not adequate, how should it be structured and worded?*

2. *In respect the rules as a whole*

2.1. *Are there aspects of professional conduct not included in the current rules which ought to be addressed?*

2 COMMITTEE MEMBERSHIP

- 2.1 Membership of the Special Committee, as at the date of this report is:

Marc Somerville (Chair)	Colin Campbell (Vice-Chair)	David Scott (Vice-Chair)
Denise Bellamy	Robert Carter	Carole Curtis
Susan Elliott	Laura Legge	Gavin MacKenzie
Colin McKinnon	Fatima Mohideen	Ross Murray
Dennis O'Connor	Hope Sealy	James Wardlaw

3 WORKING GROUPS

- 3.1 The existing Rules of Professional Conduct consist of twenty-seven rules.

3.2 Twenty-seven Working Groups have been established, one for each rule. For each Working Group a benchner has been appointed as Convenor.

3.3 Each Working Group has been asked to review the existing rule and to report to the Special Committee concerning desirable revisions.

3.4 Written reports (either interim or final) have so far been received from six Working Groups.

- 3.5 The Special Committee will review the Working Group reports with a view to circulating draft revised rules to the profession for comment. The draft revised rules will be circulated to the profession as they become available; the Committee does not intend to delay the circulation until the entire package of revised draft rules is ready. The intention is to keep the profession informed, from an early stage, over a period of time.
- 3.6 The draft revised rules will be re-considered by the Special Committee in light of comments received from the profession. Final drafts will then be submitted to Convocation for approval.
- 3.7 The Committee seeks the approval of Convocation for the method of proceeding outlined above.

4 STRUCTURE

- 4.1 The Committee has reviewed codes of professional conduct from other jurisdictions with a view to deciding on the best structure for the revised rules.

4.2 The Existing Rules

- 4.2.1 The existing rules are not of a uniform structure. In some cases, a short rule is followed by extensive commentary; in other cases, the rule itself may be several pages long, followed by a shorter commentary. In some cases, the commentary offers a rationale for the rule; in other cases, the commentary elaborates the rule and sets out examples. Despite the judgment of the Divisional Court in *Re Klein and the Law Society of Upper Canada* (1985), 50 O.R.(2d) 118 at 157, it is not universally understood in the profession that the commentaries, just as much as the rules, can form the basis for disciplinary action.

- 4.2.2 Extensive notes exist, citing authorities (many very dated) and occasionally extending the rule (see for example, the mandatory statement about "Peremptory Rules" at the end of the second paragraph of note 5 to Rule 14 in Appendix B).

4.3 Principles Guiding the Committee

- 4.3.1 In considering a structure for the revised rules, the Committee's principal objective is to achieve clarity in communicating the rules to the members of the profession and the public. In particular, members have a right to know which parts of the rules can form the basis of disciplinary action.
- 4.3.2 As a consequence of the principle in the preceding paragraph, much that is currently found in the commentaries will be presented in the form of rules.
- 4.3.3 The Committee has been guided by the suggestion that the structure of the rules ought to be determined by their purpose.
- 4.3.4 The Committee is of the view that the Rules of Professional Conduct serve a dual purpose:
 - in part, they are intended to present to the public and to lawyers a statement of the ethical ideals which members of the profession are expected to uphold;

- in part, they provide a disciplinary code, setting out mandatory rules which state the minimal level of conduct below which no lawyer can fall without being subject to disciplinary action.

4.4 To meet these two purposes, the Special Committee proposes the following structure for the revised rules:

PROPOSED STRUCTURE

- An introduction which will make clear:
 - that breach of any rule is *prima facie* evidence of "professional misconduct";
 - that the rules do not amount to an exhaustive disciplinary code;
 - that a lawyer may be guilty of "professional misconduct" for acting in violation of one of the ethical principles (set out in the first chapter) even though the conduct in question is not the subject of a specific rule;
 - that the comments (following the rules) will not be the basis for disciplinary action against a lawyer.
 - A first chapter (or preface), setting out the ethical principles which underlie the rules and to which all members are expected to aspire.
 - A series of numbered rules, written as if for a disciplinary code. (Following legislative practice, no rule will exceed one sentence.)
 - Where necessary, a rule will be followed by a comment. Comments will be a serious editorial attempt to explain the rationale and ethical foundation of the rule. In some cases, they may explain why the rule is important or what public interest it serves. An important objective of the comments will be to assist the profession to appreciate and adopt the ethical principles underlying the rule. Comments will be written in such a way that they do not convey the impression that they have the force of a rule.
 - Rules to be grouped in numbered chapters (each chapter covering the topic of one of the existing rules).
 - A bibliography giving references to appropriate texts and source material.
 - A guide to sources of case law, explaining how and where to find relevant decisions of Discipline Committees and Convocation.
- 4.5 Attached as Appendix A is a proposed re-structuring of the existing text of Rule 14, showing how the rules and commentaries would appear. Because the example uses the existing text of Rule 14, it probably has less in the way of commentary than would be found if the content of the rule had been revised. For comparison, the current structure of Rule 14 will be found at Appendix B.
- 4.6 The Committee seeks the approval of Convocation for the proposed structure outlined above.

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5 ANNOTATIONS

- 5.1 The notes in the current rules provide annotations to a wide variety of authorities.
- 5.2 The Committee suggests that the Law Society should seriously consider making available a compilation of the "common law" of the Rules of Professional Conduct: decisions of the Discipline Committee, Convocation, and perhaps Ontario courts, which interpret the rules and give examples of conduct which has, and has not, been held to violate the rules. *Quaere* whether decisions from other jurisdictions and other professions would be useful.
- 5.3 The Committee notes that the American Bar Association has adopted a two-volume approach. The *Model Rules of Professional Conduct* are published in one volume; the *Annotated Model Rules of Professional Conduct* constitute a second, much larger, volume collecting decisions from all jurisdictions, interpreting the *Model Rules*.
- 5.4 Your Committee is of the view that the compilation of annotations would be a significant on-going responsibility. It does not consider that it is a matter within its own terms of reference but wishes to bring the matter to the attention of Convocation.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1993

M. Somerville
Chair

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

- Item 4.5 - Proposed re-structuring of existing text of Rule 14. (Schedule A - A-6)
- Item 4.5 - Current structure of Rule 14. (Schedule B - B-3)

It was moved by Mr. Somerville, seconded by Mr. Thom that the Report be adopted.

Carried

THE REPORT WAS ADOPTED

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CONVOCATION ROSE AT 3:35 P.M.

Confirmed in Convocation this day of , 1993.

Treasurer