

MINUTES OF CONVOCATION

Friday, 26th October, 1990
9:30 a.m.

PRESENT:

The Treasurer (James M. Spence, Q.C.), Bastedo, Bellamy,
Bragagnolo, Callwood, Campbell, Carey, Carter, Cass, Chapnik,
Epstein, Farquharson, Ferguson, Ferrier, Furlong, Ground, Guthrie,
Hall, Harvey, Howie, Hunt, Kiteley, Lamek, Lamont, Lawrence,
Lerner, Lyons, Murphy, McKinnon, O'Connor, Pepper, Peters, Rock,
Ruby, Scace, Shaffer, Somerville, Stewart, Strosberg, Thom,
Thoman, Topp, Wardlaw, Weaver, and Yachetti.

.....

.....

"IN CAMERA"

.....

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....
"IN PUBLIC"
.....

MOTIONS

It was moved by Mr. Lamont, seconded by Mr. Strosberg THAT Mr. Lee Ferrier be added as a member of the following committees: Women in the Legal Profession, Research and Planning and Finance and Administration and the Special Committees of Bi-Centennial and Heritage.

Carried

It was moved by Mr. Lamont, seconded by Mr. Strosberg THAT Mr. Douglas Thoman be added as a member of the Discipline Policy Committee.

Carried

It was moved by Mr. Lamek, seconded by Mr. Ground THAT Mr. Shaffer be added as a member of the Finance and Administration Committee.

Carried

.....

DRAFT MINUTES

It was moved by Mr. Rock, seconded by Mr. Lamek THAT the draft Minutes of Convocation of September 7th, 27th and 28th, 1990 be approved.

Carried

.....

ADMISSIONS COMMITTEE

Ms. Peters presented the Report of the Admissions Committee of its meeting on October 11th, 1990 and the Addendum dated October 26th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of October, 1990 at 9:30 a.m., the following members being present: Ms. Peters (Chair), Mr. Farquharson (Vice-Chair) and Mr. Lamont.

B.

ADMINISTRATION

1. DIRECT TRANSFERS - COMMON LAW - REGULATION 4(1)

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

Albert James Hudec
Brian Robert MacIvor

The following has met all the requirements to transfer under Regulations 4(1) and 3(1):

Kimberly Prost

Approved

2. DIRECT TRANSFER - QUEBEC - SPECIAL PETITION
TO TRANSFER UNDER REGULATION 4(1)

A member of the Quebec Bar has applied to transfer under Regulation 4(1) which requires, among other things, that the applicant have at least three years of active practice within the five years immediately preceding the application to transfer in one or more common law provinces or territories of Canada.

The applicant has not practised in Quebec since 1985.

The applicant asks that the work he has performed in Ontario, both in his own business as an immigration consultant and business advisor for foreign investors and entrepreneurs (between July 1986 and October 1988) and the duties for which he has been responsible as a Bilingual Contract Specialist for the provincial government (from October 1988 to the present), be considered as satisfying the transfer requirements as set out in Regulation 4(1) (three of the last five years in practice).

The issue is whether the applicant's experience as outlined in the his affidavit constitutes the active practice of law.

In two previous cases involving transfer applicants from Quebec, who were allowed to proceed under Regulation 4(1) rather than 4(2), the solicitors involved had been employed in Ontario as solicitors in corporations and therefore were engaged in the practice of law.

Your Committee is of the view that the work the applicant has performed in Ontario does not satisfy the requirements under the transfer regulations and therefore he cannot be permitted to proceed with the transfer examinations. The following options are open to the applicant:

1. that he return to active practice in Quebec and make application for transfer when he has three required three years of practice;
2. that he return to law school to receive an approved Canadian LL.B. degree; or
3. that he make application to the Joint Committee on Accreditation for an assessment of his qualifications to find out what courses or what examinations would be required of him to complete in order to receive a Certificate of Qualification.

3. FULL-TIME MEMBER OF FACULTIES OF APPROVED LAW SCHOOLS

The following member of an approved law faculty asks to be called to the Bar and admitted as a solicitor without examination under Regulation 5 respecting full-time members of approved law faculties in Ontario:

Mary Martha Jackman
Faculty of Law,
Common Law Section,
University of Ottawa

B.A. Queen's University 1981;
LL.B. University of Toronto 1985;
and LL.M. Yale University 1988.

Approved

4. ADMISSION OF STUDENTS-AT-LAW

Bar Admission Course

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

Under Bar Admission Course Regulation 22(7)
32nd B.A.C. (Entering Articles 1989)

- | | |
|---|---|
| 399. Abdel-Aziz, Ihab Talaat
Mohamed | 4 yrs. Arts, Waterloo;
LL.B. Dalhousie/89; |
| 400. Abrahams, Daniel Joseph | 4 yrs. Arts, Toronto;
LL.B. Windsor/89; |
| 401. Agueci, Franca Maria Pia | B.A. York/83;
LL.B. Windsor/89; |
| 402. Aikman-Springer, Judith Mae | Joint Committee on
Accreditation/90; |
| 403. Akhavan, Noora | B.A. Toronto/86;
LL.B. Western/89; |
| 404. Alexander, Angelina | 2 yrs. Arts, Toronto;
LL.B. Toronto/89; |

405.	Ali, Ayoub Azam	B.Sc. Toronto/83; LL.B. Western/89;
406.	Anderson, Charlene Shirley	B.A. Alberta/86; LL.B. York/89;
407.	Andrikakis, Christ	B.A. Toronto/85; LL.B. Ottawa/89;
408.	Angelopoulos, Tonys	B.A. Toronto/89; LL.B. York/88;
409.	Anthony, Anita Agnes Mary	B.A. Toronto/84; LL.B. Windsor/89;
410.	Antoniani, Sandra	B.A. York/86; LL.B. Manitoba/89;
411.	Arajs, Vera Marianne	B.A. Waterloo/72; B.Ed. Queen's/74; LL.B. Manitoba/89;
412.	Armchuk, Esther Louise	B.A. McMaster/86; LL.B. Windsor/89;
413.	Armstrong, Mary Jane	B.A. Ottawa/85; LL.B. Alberta/89;
414.	Ashbourne, Stephen Richard	B.A. Western/85; LL.B. Toronto/89;
415.	AshenBrenner, Andrea Dawn	3 Yrs. Arts, Simon Fraser; LL.B. York/89;
416.	Asper, Leonard Joshua	A.B. Brandeis, U.S.A./86; LL.B. Toronto/89;
417.	Atlas, David	B.Sc. Toronto/86; LL.B. York/89;
418.	Babcock, Michael John	B.A. Aquinas College, U.S.A./77; M.Div. Toronto/84; LL.B. York/89;
419.	Ballam, Dianne Jean	Mature Student; LL.B. Queen's/89;
420.	Barber, Ruby Ellen	B.A. Queen's/86; LL.B. York/90;
421.	Barrington, Deborah Ann	B.A. London, U.K./80; LL.B. Ottawa/90;
422.	Bartley, Brent Herman	B.Ed. New Brunswick/84; B.A. New Brunswick/89; LL.B. New Brunswick/89;
423.	Basso, Mara	B.A. York/85; M.A. York/86; LL.B. Western/89;
424.	Bauman, Roger Benjamin	B.Ed. Alberta/80; LL.B. Alberta/89;
425.	Bawden, Peter Gordon	B.A. Queen's/87; LL.B. Queen's/89;
426.	Bean, David Michael	3 yrs. Arts, McGill; LL.B. Toronto/89;

- | | | |
|------|-------------------------------|---|
| 427. | Bean, Thomas Edward | B.A. British Columbia/86;
LL.B. Toronto/89; |
| 428. | Boulter, Keith Cecil | B.A. York/86;
LL.B. Manitoba/89; |
| 429. | Bowen, Susan Margaret | B.Sc.N. Toronto/79;
LL.B. York/89; |
| 430. | Brown, David Wilfrid | B.A. Concordia/85;
B.C.L. McGill/89;
LL.B. McGill/89; |
| 431. | Brown, Jerry Warren | Mature Student;
LL.B. Windsor/82; |
| 432. | Browne, Colin Anthony | B.A. Saint Mary's/83;
LL.B. Dalhousie/89; |
| 433. | Bryson, Elizabeth Bucci | B.A. Toronto/84;
M.A. Queen's/86;
LL.B. Queen's/89; |
| 434. | Bugyra, William James | 2 yrs. Arts, Windsor;
LL.B. York/89; |
| 435. | Butler, Yasu Sidky | Joint Committee on
Accreditation/89; |
| 436. | Calvert, Cynthia Jean | B.A. Waterloo/84;
LL.B. Ottawa/89; |
| 437. | Campbell, Gregory Alfred | 2 yrs. Arts, Windsor;
LL.B. Windsor/89; |
| 438. | Cantor, Rochelle Fern | B.A. York/81;
LL.B. Western/89; |
| 439. | Carlisle, James Allen Patrick | B.A. York/72;
B.Sc. York/78;
M.Sc. York/81;
LL.B. Ottawa/89; |
| 440. | Casola, Giovanni | B.A. Carlton/85;
LL.B. Windsor/89; |
| 441. | Cassavoy, Elisabeth Danielle | B.A. Toronto/86;
LL.B. York/89; |
| 442. | Cattanach, John Roderick | B.A. Queen's/80;
LL.B. York/89; |
| 443. | Chabursky, Lubomyr Andrew | B.A. Toronto/86;
LL.B. York/89; |
| 444. | Chan, Daniel Lap Fung | B.Comm. Toronto/86;
LL.B. Toronto/89; |
| 445. | Chan, Rosanna Siu King | Joint Committee On
Accreditation/89; |
| 446. | Channan, Suchetna | B.A. Calgary/80;
B.Ed. Calgary/81;
M.Ed. Alberta/84;
LL.B. Alberta/87; |
| 447. | Chau, Thomas Joseph Do-Trong | B.A. York/84;
LL.B. Windsor/89; |

448.	Chen, Deh Chien	Joint Committee on Accreditation/90;
449.	Chen, Ee Lin	Joint Committee on Accreditation/89;
450.	Crosner, Howard	B.I.S. Waterloo/84; LL.B. Queen's/89;
451.	Crosse, Tanya Louise	B.A. Mount Allison/86; LL.B. New Brunswick/89;
452.	Cuervo-Lorens, Ralph	B.A. Victoria/86; LL.B. Queen's/89;
453.	Cunningham, Douglas Michael	B.A. York/81; M.A. Queen's/84; LL.B. McGill/89;
454.	Czegledy-Nagy, Peter Kalman	4 yrs. Arts/Western; LL.B. Toronto/89;
455.	Daigle, Joseph Marc Gilles	B.Soc.Sc. Ottawa/86; LL.B. Ottawa/89;
456.	Daly, Diane Florence	B.A. Toronto/82; LL.B. York/89;
457.	Daniel, Julie Renee	2 yrs. Arts, Windsor; LL.B. Ottawa/89;
458.	D'Ascanio, Angelo Carmelo	B.A. Toronto/86; LL.B. Queen's/89;
459.	Daviau, Daniel Joseph	B.A. Western/85; M.B.A. York/89; LL.B. York/89;
460.	Daviau, Karine Krieger	B.F.A. York/85; M.B.A. York/89; LL.B. York/89;
461.	Davies, Gordon Allan	B.A. British Columbia/84; M.B.A. Ottawa/89; LL.B. Ottawa/89;
462.	Davison, Catherine Elizabeth	4 yrs. Arts/Queen's; LL.B. Dalhousie/89;
463.	Daw, Lesa Margaret	B.B.A. Acadia/86; LL.B. Windsor/89;
464.	de Vries-Bonneau, Anita Lorraine	B.A. St.Lawrence, USA/86; LL.B. Ottawa/89;
465.	Defelice, Mary Christine	B.A. Carleton/86; LL.B. Ottawa/89;
466.	Degutis, Charles Peter	B.A. Toronto/85; LL.B. Manitoba/89;
467.	Del Zotto Sproul, Maria Micheale	B.A. Western/86; LL.B. Ottawa/89;
468.	Delaney, Richard Christian	B.A. Western/85; LL.B. Western/89;
469.	DellaLibera, Roberto Pietro	B.A. York/85; LL.B. Western/89;

- | | | |
|------|-----------------------------------|--|
| 470. | Deopaul, Muneeshwar | B.A. Waterloo/78;
LL.B. Windsor/89; |
| 471. | DeSena, Francesco E. | 2 yrs. Arts, Western;
LL.B. York/89; |
| 472. | Despatis, Jacques Andre
Joseph | B.A. Ottawa/84;
B.Soc.Sc. Ottawa/86;
LL.B. Ottawa/89; |
| 473. | Deveaux, Kevin Eugene | 2 yrs. Commerce, Saint
Mary's;
LL.B. York/89; |
| 474. | Devine, Shaun Edward | B.A. Western/86;
LL.B. Western/89; |
| 475. | Diamond, Andrew Michael | B.A. McGill/86;
LL.B. York/89; |
| 476. | Dick, Caroline Margaret | B.A. McMaster/89;
LL.B. Western/89; |
| 477. | Dickson, John Denis | B.A. York/86;
LL.B. York/89; |
| 478. | Dillon, Larry William | B.A. Wilfrid Laurier/71;
M.B.A. Western/89;
LL.B. Western/89; |
| 479. | DiMondo, Carmelina | 2 yrs. Arts, Toronto;
LL.B. York/89; |
| 480. | Doane, Martin Jeffrey | B.A. Western/86;
LL.B. York/89; |
| 481. | Donkin, Alexandra Claire | B.A. Trent/85;
LL.B. Toronto/89; |
| 482. | Donnelly, Teresa Mary | B.A. McGill/86;
LL.B. Toronto/89; |
| 483. | Doobay, Kumar Deonarayan | Joint Committee on
Accreditation/90; |
| 484. | Doorly, Catherine Mary | B.A. Western/86;
LL.B. Ottawa/89; |
| 485. | Dotsikas, Peter Spiros | B.A. McGill/84;
M.A. Carleton/85;
LL.B. Queen's/89; |
| 486. | Double, Richard Frederick | B.A. Wilfrid Laurier/82;
M.A. Carleton/86;
LL.B. Ottawa/89; |
| 487. | Douek, Audrey Lee | B.A. McGill/86;
LL.B. Ottawa/89; |
| 488. | Downs, Allyson Merren | B.Soc.Sc. Ottawa/86;
LL.B. York/89; |
| 489. | Doxtdator, Darrell Gordon | B.A. McMaster/86;
LL.B. York/89; |
| 490. | Doyle, Wendell Stephen | B.A. Dalhousie/79;
B.Ed. Windsor/82;
M.A. Windsor/85;
LL.B. Windsor/89; |

491.	Drumm, Lorraine Christine	B.A. Waterloo/86; LL.B. York/89;
492.	Druyan, Thomas Zalmon	B.A. Toronto/85; LL.B. Toronto/88;
493.	Dubois, Colette Therese	B.A. Brock/84; M.A. Ottawa/86; LL.B. Ottawa/89;
494.	Dubrofsky, Lewis	B.A. Hebrew University of Jerusalem/86; LL.B. Western/89;
495.	Eastwood, James Nelson	B.A. Carleton/86; LL.B. Toronto/89;
496.	Ecclestone, Julianne Marie	B.A. Queen's/86; LL.B. York/89;
497.	Edmondstone, Daniel George	B.Sc. Toronto/86; LL.B. Toronto/89;
498.	Edward, Valerie Gene	B.A. McMaster/86; LL.B. York/89;
499.	Edwards, Alan Wayne	B.A. Calgary/83; LL.B. Calgary/87;
500.	Edwards, David Keith	B.A. Western/86; LL.B. Queen's/89;
501.	Edwards, Vicky Jeanne	B.A. Toronto/86; LL.B. Western/89;
502.	Egalite, Jean Dhimy	B.Soc.Sc. Ottawa/85; LL.B. Ottawa/89;
503.	Eisen, Mitchell Lloyd	B.A. McGill/84; LL.B. Toronto/89;
504.	Eizenga, Michael Allan	B.A. Western/79; M.Th. Dallas Theological Seminary, U.S.A./83; M.A. Western/86; LL.B. Western/89;
505.	Elhadad, David	Mature Student; LL.B. Ottawa/89;
506.	Elkin, Mark	B.A. Wilfrid Laurier/78; LL.B. York/89;
507.	Embree, Laura Mary-Jean	B.A. Western/86; LL.B. Toronto/89;
508.	England, Katherine Anne	B.A. New Brunswick/79; LL.B. Dalhousie/87;
509.	Erickson, Christian Brent Leif	3 yrs. Arts, Calgary; LL.B. Toronto/89;
510.	Erickson, Kathryn	2 yrs. Commerce, Boston, U.S.A./86; LL.B. York/89;
511.	Evans, Philip Gregory	2 Yrs. Arts, Toronto; LL.B. York/89;

512.	Fahey, Gerald Joseph	1 yr. Arts, Victoria; 2 yrs. Commerce, British Columbia; LL.B. Toronto/89;
513.	Fainbloom, Kevin Ian	B.A. McGill/85; LL.B. Dalhousie/89;
514.	Fairbairn, Keith Gordon	2 yrs. Arts, Brigham Young, U.S.A.; LL.B. York/89;
515.	Falla, Robert George Alexander	B.Sc. Western/85; LL.B. Ottawa/89;
516.	Farah, Hanna	2 Yrs. Arts, Western; LL.B. York/89;
517.	Farant, Joseph Omer Jean-Michel	B.A. Carleton/86; LL.B. Ottawa/89;
518.	Farkas, Joseph Stephen	B.A. Toronto/76; LL.B. Toronto/89;
519.	Fazackerley, Brian Lawrence	1 yr. Arts, York; 1 yr. Arts, Wilfrid Laurier; LL.B. Western/89;
520.	Feasby, Lisa Marie	B.A. York/86; LL.B. York/89;
521.	Fedoruk, James Curtis	B.A. Windsor/75; M.D. McMaster/78; LL.B. Windsor/84;
522.	Feldbloom, Alex Jeffrey	Joint Committee on Accreditation/89;
523.	Fernandez, Helena Maria	B.A. Calgary/85; LL.B. York/89;
524.	Fisher, Susan Lynn	B.A. Evangel, Missouri, U.S.A./86; LL.B. New Brunswick/89;
525.	Fishleigh, Leigh Gerald	B.A. McGill/85; LL.B. Western/89;
526.	Fitzmaurice, Jill Elizabeth	B.A. McGill/84; LL.B. Windsor/89;
527.	Fletcher, Mark Allan	2 yrs. Arts, Western; LL.B. Western/89;
528.	Flexer, Jerold Brian	Mature Student; LL.B. Manitoba/87;
529.	Folkins, Peter Nicholas	B.A. Dalhousie/84; M.A. Dalhousie/87; LL.B. Toronto/89;
530.	Galarneau, Susan Elizabeth	B.Soc.Sc. Ottawa/86; LL.B. York/89;
531.	Gallant, Deborah Elizabeth	B.B.A. New Brunswick/87; LL.B. New Brunswick/89;
532.	Galligan, Catherine Anne	B.A. Toronto/83; LL.L. Ottawa/89; LL.B. Ottawa/88;

533. Gallin, Janet Louise 3 yrs. Arts, Waterloo;
LL.B. Toronto/89;
534. Garvey, Timothy Stephen B.P.E. McMaster/86;
LL.B. Windsor/89;
535. Garwood-Jones, Richard Trevor B.A. Queen's/86;
LL.B. Queen's/89;
536. Gaudet, Grace Elizabeth B.A. Queen's/81;
M.L.S. McGill/84;
M.A. Carleton/87;
LL.B. Dalhousie/89;
537. Gauthier, Jane Ann B.Comm. Carleton/83;
LL.B. Ottawa/89;
538. Gayk, Corina Marlen 2 yrs. Arts, Toronto;
LL.B. York/89;
539. Gayle, Glenford Arthur B.A. York/82;
Llewellyn LL.B. York/89;
540. Geatros, Gregory Themis B.Admin. Regina/88;
LL.B. Saskatchewan/86;
541. Gelowitz, Mark Adam B.A. Regina/83;
LL.B. Queen's/86;
542. Gemmell, Murray William B.A. Carleton/86;
LL.B. Queen's/89;
543. Gerson, Howard David B.A. McGill/86;
LL.B. York/90;
544. Giamberardino, Susan Rita B.Admin. Ottawa/86;
LL.B. Toronto/89;
545. Habib Hassan, Marzia B.A. Williams,
Massachusetts, U.S.A./85;
LL.B. Toronto/89;
546. Hageman, Cecilia Mary B.Sc. Western/81;
Ph.D. Western/89;
LL.B. Western/89;
547. Hall, R. Lynn Joint Committee on
Accreditation/90;
548. Hanley, Siobhan Ann B.A. Alberta/78;
LL.B. Dalhousie/89;
549. Hannigan, Patricia Anne B.A. Alberta/84;
LL.B. Victoria/88;
550. Harmer, Lily Isabelle B.Comm. Queen's/81;
LL.B. Toronto/89;
551. Hart, Christopher Peter A.B. Vassar, U.S.A./85;
LL.B. Dalhousie/89;
552. Hart, Clifford Jonathan B.A. McGill/84;
LL.B. Alberta/87;
553. Harvey, David Gerald 2 yrs. Arts, York;
LL.B. York/89;
554. Hassan, Jim Najeeb B.A. Western/86;
LL.B. Victoria/89;

Approved

5. CALL TO THE BAR AND CERTIFICATE OF FITNESS

Bar Admission Course

The following candidate, having successfully completed the thirty-first Bar Admission Course, filed the necessary documents and paid the required fee of \$210.00 now applies for call to the Bar and to be granted a Certificate of Fitness:

Christine Marie Hawrylyshyn-Batruch

Approved

Transfer from another province - Regulation 4(1)

The following candidate has completed the teaching term of the Bar Admission Course. Having now also completed the required time in active practice as set out in Regulation 4(1), filed the necessary documents and paid the required fee, he applies for call to the Bar and to be granted a Certificate of Fitness:

Michael Christopher Varabioff

Province of British Columbia

Approved

Full-Time Members of Faculties of Approved Law Schools

The following candidate, having filed the necessary documents and complied with the requirements of the Society in her particular case, is now entitled to be called to the Bar of Ontario and to be granted a Certificate of Fitness:

Professor Mary Martha Jackman

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

Fee: \$200.00

Approved

ALL OF WHICH is respectfully submitted

DATED this 26th day of October, 1990

"P. Peters"
Chair

ADMISSIONS COMMITTEE - ADDENDUM - OCTOBER 26TH 1990

1. CALL TO THE BAR AND CERTIFICATE OF FITNESS

Bar Admission Course

Pending the approval of Convocation on the morning of the 26th October, 1990, the following candidate requests permission to be called to the Bar and granted a Certificate of Fitness on that same date:

Dawn Marcelle Marian Wilson

The candidate has successfully completed the thirty-first Bar Admission Course, filed the necessary documents and paid the required fee of \$210.00.

THE REPORT AND ADDENDUM WERE ADOPTED

.....

CALL TO THE BAR

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

Christine Marie Hawrylyshyn-Batruch	31st Bar Admission Course
Dawn Marcelle Marian Wilson	31st Bar Admission Course
Mary Martha Jackman	Professor, University of Ottawa

.....

SPECIAL COMMITTEE ON DISCIPLINE PROCEDURES

Mr. Yachetti continued with the Report on the Special Committee on Discipline Procedures.

SPECIAL COMMITTEE ON DISCIPLINE PROCEDURES

FINAL REPORT

OVERVIEW

In October 1989, Convocation appointed a Special Committee of Benchers to look into the current discipline procedures and to recommend how these procedures could be improved. Roger Yachetti was appointed to be the Chair of this Committee and Harvey Strosberg was appointed as Vice-Chair. The following Benchers were also appointed to the Committee: Messrs. G. Arthur Martin, Thomas Bastedo, Ms. Netty Graham, Ms. Fran Kiteley, Messrs. Paul Lamek, Dennis R. O'Connor, Clayton Ruby, Marc Somerville, Stuart Thom, Douglas Thoman and Robert C. Topp. The following non-Benchers were also asked to participate: Messrs. Robert Conway, Donald Crosbie, Scott Kerr, Gavin MacKenzie, Richard Tinsley and H. Reginald Watson. Mr. Patrick Ballantyne served as Secretary to the Committee. Ms. Anne Merritt sat as an observer for the Ministry of the Attorney General.

The former Treasurer, Lee Ferrier, provided the Special Committee with "Terms of Reference" (attached as Appendix "1"). The Special Committee decided that these Terms should be interpreted broadly so as to ensure a full and complete review of the issues contained therein as well as to enable it to address those issues thoroughly.

Your Committee invited the oral and written comments of various persons who have over the years gained considerable experience with the current discipline procedure. Attached as Appendix "2" is a list of those persons whose contributions were received and carefully reviewed by your Committee. Your Committee expresses its sincere gratitude to all who assisted it in its work.

Convocation also appointed a second Special Committee to review the complaints procedure. This Committee, which was chaired by Ms. June Callwood, has reported to Convocation under separate cover after having been in close contact with the Special Committee On Discipline Procedures. It is hoped that with the benefit of the Reports of these two Committees, Convocation will be able to review, evaluate and adapt for the future the complaints and discipline procedures, the most significant and important functions of self-regulation carried on by the Society.

PRELIMINARY TASKS

Your Committee had initial concerns about the potential for overlap between the two Special Committees looking into the complaints and discipline procedures. At the first meeting of the Special Committee On Discipline Procedures, the Committee heard from Ms. Callwood, who outlined the mandate of her Committee and identified some specific areas which she expected her Committee to review. After some

discussion, your Committee agreed that a line could be drawn between the work of the two Committees. It was agreed that the Yachetti Committee should review the procedure from the point when an authorization of a discipline complaint is requested. The Committee then agreed to break its work down into sub-committees that would review specific areas of concern. Accordingly, Messrs. Bastedo and Topp each prepared briefs: Mr. Topp reviewed the legislation governing other professions in the Province of Ontario and Mr. Bastedo undertook a review of the discipline procedures in other jurisdictions. These Reports proved to be helpful to your Committee in its deliberations. In addition to these two Reports, the Chair asked Ms. Kiteley and Messrs. O'Connor and Somerville to prepare a list of issues which this Committee had to consider in order to fulfill its mandate. This list was prepared, submitted and later edited by Ms. Kiteley and Mr. Bastedo and continued to be amplified by the Committee during the course of its meetings. This list (attached as Appendix "3") became the "road map" used by your Committee.

Your Committee also had the benefit of various reports prepared by Mr. Watson with the assistance of the Complaints and Discipline Staff. These Reports outlined the complaints and discipline procedures presently in place at the Society.

Your Committee also received a written submission from Gavin MacKenzie following release of the interim report.

Finally, the Committee also had the benefit of materials prepared by Ms. Anne Merritt of the Attorney General's Office. These materials concerned matters of interest to your Committee and proved to be very helpful.

RECOMMENDATIONS OF THE SPECIAL COMMITTEE ON DISCIPLINE PROCEDURES

Your Committee held its initial meeting on December 12, 1989. Between that date and the time of the presentation of this Report, the Committee met seventeen times. What follows are the formal Recommendations adopted by your Committee and a brief review of the opposing views taken with respect to important issues:

SELF-REGULATION

THE ROLE OF THE LAW SOCIETY OF UPPER CANADA AS A SELF-GOVERNING BODY MUST BE MAINTAINED AND WITH IT THE POWER TO DISCIPLINE ITS MEMBERS.

Your Committee believes that an independent profession of law is as necessary in a Democracy as an independent judiciary and that a necessary requirement of this independence is the right to self-regulate and self-discipline. The Committee referred to the McRuer Report of 1968 which dealt in part with self-governing professions. The Report firmly stated that self-governing professions are created to safeguard the public interest - the question is not "does the profession desire self-regulation?", but "does the public interest require it?" Reference was also made to an article by Ron Ellis entitled "The Independent Bar" in which Mr. Ellis argues inter alia that an independent profession of law is as necessary as an independent judiciary, although that point is often misunderstood by the public. Your Committee agrees and believes that, ideally, the only role for the courts in the discipline process is that of judicial review. Mr. Ellis equates self-government of the legal profession with a constitutional imperative and asks whether putting the responsibility of certification and disciplining of lawyers in the hands of the government would offend this imperative. Your Committee is of the view that it would.

INDEPENDENCE

THE INTEGRITY OF THE DISCIPLINE PROCEDURE REQUIRES THAT SOCIETY STAFF PROCEED WITH INVESTIGATIONS AND DISCIPLINE HEARINGS INDEPENDENTLY OF THE BENCHERS, SUBJECT ONLY TO GENERAL POLICY GUIDELINES.

Your Committee spent a considerable amount of time discussing this issue. The fundamental problem which prompted the Committee to pass this resolution is that in a unitary organization such as the Society, agents of the organization (with the term "agents" used broadly) must discharge investigative, prosecutorial and adjudicative responsibilities. In our courts, by way of contrast, investigative, prosecutorial and adjudicative responsibilities are discharged by agents of organizations which are wholly independent of each other. (The objective underlying the Committee's resolution is to separate to the greatest extent possible, the Society's prosecutorial and investigative responsibilities on the one hand, from its adjudicative responsibilities on the other. Although steps have been taken within the Society to separate the investigative and prosecutorial functions themselves, that objective is, in the view of your Committee, much less important). The need for this separation of responsibilities is recognized by the American Bar Association Model Rules and the commentaries accompanying them. Your Committee agrees entirely with the following comment found on page 10 of the American Bar Association Model Rules:

"vesting all prosecutorial responsibility in disciplinary counsel is necessary if there is to be a separation of prosecutorial and adjudicative functions in a unitary agency."

Much of the debate in the Committee on this and other subjects centred on the issue of whether professional disciplinary proceedings are civil or criminal in nature. The American Bar Association Model Rules (at page 36) state:

"disciplinary proceedings are neither civil nor criminal but are sui generis."

While analogies to the Rules of Civil Procedure are appropriate in some circumstances (for instance, the issue of two-way disclosure discussed below), it would be an error to regard Convocation, its members or its Senior Executive Officers as "discipline counsel's clients" because of Convocation's adjudicative responsibilities; it would compromise both the impartiality of Convocation and the independence of Discipline Counsel if the latter were constrained to follow the former's instruction in making discretionary decisions in individual cases.

For this reason, the Committee endorses the views expressed by Mr. Martin, that Discipline Counsel, like Crown Attorneys, represent the public, although their salaries or fees are paid by the Law Society.

The current legislation and the model envisioned by your Committee call for the "charging" decision to be made by one or more Benchers (possibly in the model envisioned by your Committee, in conjunction with a non-Bencher lawyer). While this involvement of Benchers in the "charging" decision might be seen by some as an inappropriate involvement of adjudicators in what is essentially a prosecutorial responsibility, it is the Committee's view that the charging decision is of sufficient importance that there is a legitimate expectation on the part of members of the public that that decision will be made by Benchers who have been elected by the profession (or in the case of lay-Benchers, duly appointed) to its governing body. Concerns about compromising Convocation's impartiality or the impartiality of a smaller group representing Convocation can be answered satisfactorily by strict adherence to two principles:

- 1) Benchers involved in the charging decision in a particular case must be disqualified from any adjudicative responsibility with respect to that same case; and
- 2) Once the complaint has been authorized, Discipline Counsel must be free to conduct the proceeding (including providing disclosure, recommending penalty, requesting withdrawal or reduction, deciding on appeal initiatives and response) uninhibited by the necessity of taking instructions from any of Convocation, its members or its Senior Executive Officers.

The need for Discipline Counsel to be independent does not extend beyond their prosecutorial functions. In your Committee's view it is entirely appropriate and even perhaps essential to the smooth operation of the Society that Discipline Counsel report to and take direction from the Senior Executive Officers of the Society on managerial or administrative matters, such as, budgeting. It is equally appropriate that Discipline Counsel take direction from the Benchers on policy matters which apply to all or specified types of discipline cases as opposed to individual cases.

DISCIPLINE COMPLAINTS AUTHORIZATION COMMITTEE

- 1) A NEW COMMITTEE SHOULD BE CREATED TO AUTHORIZE FORMAL DISCIPLINE COMPLAINTS. THIS DISCIPLINE COMPLAINTS AUTHORIZATION COMMITTEE SHOULD CONSIST OF ONE BENCHER, ONE LAY-BENCHER AND ONE NON-BENCHER LAWYER. THIS COMMITTEE SHOULD BE APPOINTED BY THE TREASURER AND APPROVED BY CONVOCATION AND IT SHOULD SIT FOR A ONE-YEAR TERM. THE MEMBERS OF THIS COMMITTEE SHOULD BE DISQUALIFIED FROM ANY ADJUDICATIVE RESPONSIBILITIES DURING THEIR TERM ON THIS COMMITTEE AND SUBSEQUENTLY IN RESPECT OF ANY FORMAL DISCIPLINE COMPLAINT PREVIOUSLY AUTHORIZED BY THE COMMITTEE WHILE THEY WERE MEMBERS.
- 2) THE SOLICITOR SUBJECT TO DISCIPLINE SHOULD HAVE NO RIGHT OF REPRESENTATION BEFORE THE DISCIPLINE AUTHORIZATION COMMITTEE.
- 3) THE DECISION TO AUTHORIZE A FORMAL COMPLAINT SHOULD REMAIN A PURELY ADMINISTRATIVE ONE.
- 4) THERE SHOULD BE NO REVIEW OF THAT DECISION AVAILABLE.
- 5) REASONS SHOULD BE GIVEN BY THE DISCIPLINE COMPLAINTS AUTHORIZATION COMMITTEE IN ALL INSTANCES WHERE IT REFUSES TO AUTHORIZE A FORMAL COMPLAINT, OR REFUSES THE FORMAL COMPLAINT SOUGHT BUT SUBSTITUTES A LESSER FORMAL COMPLAINT. CARE SHOULD BE TAKEN IN THE REASONS NOT TO PREJUDICE A FAIR HEARING OF ANY FORMAL COMPLAINT;
- 6) THE DISCIPLINE COMPLAINTS AUTHORIZATION COMMITTEE SHALL AUTHORIZE AN INVITATION TO ATTEND WHENEVER IT DEEMS THAT COURSE APPROPRIATE.

When reviewing the discipline systems in place in other jurisdictions throughout the world, what became clear was the increased reliance upon laypersons in various important decision-making positions. Your Committee has considered the role of laypersons carefully and applauds the quality of work performed by the lay-Benchers, past and present, at the Law Society of Upper Canada. Your Committee concluded that their function as the voice of the public is one that ought to be expanded, one such instance being the mandatory placement of a lay-Benchers on the Discipline Complaints Authorization Committee. It is expected that the lay-Benchers will provide this important Committee with a fresh perspective as to how the general public views the responsibilities and conduct of a lawyer.

Just as important as the perspective of the lay-person is the perspective of a lawyer's peers and thus the recommendation that a non-Benchers lawyer sit on the Discipline Complaints Authorization Committee. There was considerable discussion amongst your Committee members, as well as recommendations from other interested parties, that centred on the increased use of non-Benchers lawyers in the discipline process. While the consensus of your Committee was that Benchers are elected to perform discipline functions and thus should not unduly delegate that responsibility, it was concluded that the inclusion of a non-Benchers lawyer on the Discipline Complaints Authorization Committee would promote the perception that the authorization process is a fair one, with the views of a layperson and a lawyer being given full and equal consideration.

Another significant benefit of the inclusion of a lay-Bencher and a non-Bencher lawyer on this Committee will be the lessening of an already heavy workload currently burdening the elected Benchers. The time pressures on the Benchers are significant, and this was recognized by not only the members of your Committee but also by numerous lawyers who made submissions to your Committee; all recommended that, wherever possible, Bencher time be used as efficiently as possible. The increased workload on the lay-Bencher may require consideration of the adequacy of having only four lay-Benchers.

It should be noted that your Committee had the benefit of an in depth review of the Quebec discipline process where the investigation of complaints and the decision to commence formal discipline proceedings are matters decided independently of their "General Council". While your Committee was of the view that Benchers were elected in large part to perform this disciplinary function, it did see some merit in the "independence" of the Quebec system. Your Committee believes that the inclusion of the lay-Bencher and the non-Bencher lawyer on the Discipline Complaints Authorization Committee would go a significant way toward achievement of this goal, provided that those Benchers who sit on the Discipline Complaints Authorization Committee be relieved of all disciplinary adjudication during their terms in office and thereafter in regards to those complaints approved during their term. Another benefit of a one-year term is the likelihood of consistency in the charging process.

Your Committee was of the view that the current practise of not allowing representation by the solicitor at the complaints authorization level is acceptable and fair, as is the determinative nature of that decision. To provide otherwise would be to complicate unduly and unnecessarily the authorization process where there is clearly no reason to do so. Your Committee does recommend, however, that reasons be given by the Discipline Complaints Authorization Committee wherever it refuses to authorize a complaint or wherever a lesser complaint than the one sought is substituted. Once again, the goal here is to deflect any criticism that the Society is operating behind closed doors, as well as to ensure that the complainant is kept fully informed of the proceedings. It is not recommended that the Society take active steps toward publishing these reasons nor is it anticipated that these reasons need be voluminous in nature. Finally, the reasons of the Discipline Complaints Authorization Committee should be drafted so that they do not in any way prejudice any other formal complaint that may be substituted by the Discipline Complaints Authorization Committee or any existing or concurrently authorized complaint where the issues may overlap.

The existing role of the Secretary in the Discipline Complaints Authorization process should be maintained, as efficiency dictates that complaints should go through a central office. Your Committee has confidence that the Secretary is the appropriate person to perform this function.

DEFINITION OF "PROFESSIONAL MISCONDUCT" and "CONDUCT UNBECOMING A BARRISTER AND SOLICITOR"

Your Committee was urged by some lawyers to attempt definitions of the two discipline offences. Your Committee concluded that the present practice of charging one or other of the general offences, with particulars provided in each complaint, is preferable. It was felt that legislative definitions would be unnecessarily restrictive and not necessarily in the interest of the profession or the public.

DISCLOSURE

The Committee adopted the guidelines which follow: (Note - Disclosure pursuant to Law Society proceedings is only for the purpose of Society proceedings, i.e., not for other purposes, such as criminal proceedings.)

The following disclosure must be made in every case:

1) THE SOCIETY AND THE SOLICITOR SHALL DISCLOSE ALL RELEVANT DOCUMENTS IN THEIR POSSESSION, CONTROL OR POWER EXCEPT TO THE EXTENT SUCH DOCUMENTS ARE PRIVILEGED AS A MATTER OF LAW. THE WORD "DOCUMENT" SHALL BEAR THE SAME MEANING AS IN RULE 30.01(1)(a) OF THE RULES OF CIVIL PROCEDURE WHICH READS AS FOLLOWS:

"DOCUMENT" INCLUDES A SOUND RECORDING, VIDEOTAPE, FILM, PHOTOGRAPH, CHART, GRAPH, MAP PLAN, SURVEY, BOOK OF ACCOUNT AND INFORMATION RECORDED OR STORED BY MEANS OF ANY DEVICE";

2) THE SOCIETY SHALL DISCLOSE THE NAMES AND ADDRESSES OF PERSONS WHO MIGHT REASONABLY BE EXPECTED TO HAVE KNOWLEDGE OF THE MATTERS IN ISSUE TOGETHER WITH A COPY OF ANY WRITTEN STATEMENTS OF SUCH PERSONS;

3) WHERE WRITTEN STATEMENTS DO NOT EXIST, THE SOCIETY SHALL PROVIDE A SUMMARY OF THE ANTICIPATED EVIDENCE OF SUCH PERSONS;

4) THE SOCIETY SHALL DISCLOSE ALL EXPERT REPORTS IN ITS POSSESSION. THE SOLICITOR SHALL DISCLOSE ONLY THOSE EXPERT REPORTS THAT THE SOLICITOR INTENDS TO RELY UPON AT THE HEARING. A PARTY WHO INTENDS TO CALL AN EXPERT WITNESS AT A HEARING SHALL, NOT LESS THAN TEN DAYS BEFORE THE COMMENCEMENT OF THE HEARING, SERVE ON THE OTHER PARTY A REPORT SIGNED BY THE EXPERT SETTING OUT THE EXPERT'S NAME, ADDRESS, AND QUALIFICATIONS AND THE SUBSTANCE OF THE EXPERT'S PROPOSED TESTIMONY. NO EXPERT WITNESS MAY TESTIFY, EXCEPT WITH LEAVE OF THE PANEL, UNLESS THIS REQUIREMENT IS MET.

5) A PRE-HEARING CONFERENCE SHALL BE HELD AT THE REQUEST OF EITHER PARTY.

Both in reviewing the current disclosure policy in place in the Discipline Department as well as in formulating ideas as to how to improve it, your Committee had the benefit of a memorandum prepared by Mr. Watson. The discussions focused to a large degree on the question of whether discipline proceedings were civil or criminal in nature. Your Committee gave full consideration to R. v. Wigglesworth [1987], 2 S.C.R. 541, a decision of the Supreme Court of Canada which held that s. 11 of the Charter of Rights did not apply to internal discipline proceedings as "by nature" they were not criminal and there were no "true penal consequences". Some members of your Committee thus argued that Law Society proceedings are not criminal in nature and, accordingly, procedures associated with Law Society Discipline Hearings such as disclosure, should also not be criminal in nature. Those holding that point of view argued that it would be unreasonable to impose a criminal type procedure on a body whose mandate is to protect the public. In light of this significant mandate, Society proceedings should have a disclosure process which more closely approximates that of civil, rather than criminal proceedings. In other words, there should be disclosure obligations on both the solicitor and the Society.

That said, there were some members of your Committee who felt it was unfair and unreasonable to require a solicitor involved in discipline proceedings to make full and total disclosure. One member argued that the right to silence is a fundamental right and must not be disturbed without good reason. He noted that a member has no right to remain silent before a formal complaint has been issued as the Society has the power to require cooperation with a discipline investigation. Failure to respond to inquiries from the Society at this stage could lead to a finding that the solicitor is ungovernable (Rules of Professional Conduct - Rule 13, Commentary 3 for example). Once the formal complaint has been issued, he argued, there should be no formal obligation on the solicitor to make disclosure. Another member of your Committee went further and argued that to require disclosure by a solicitor would be to run the risk of:

- i) Self-incrimination by the solicitor; and
- ii) incrimination of clients.

It was countered that excessive reliance upon the type of protections afforded a person charged with a criminal offence is out of place in the Law Society environment. The object of the discipline process is to maintain the integrity of the profession for the benefit of the public, a consideration ranking ahead of the protections afforded by criminal procedure.

What your Committee ultimately recommends is a hybrid of these two points of view. While the solicitor will not be required to make full and total disclosure, both parties (the Society and the solicitor) should be required to disclose all relevant documents in the possession, control or power of each except to the extent that such documents are privileged as a matter of law. It is hoped that in this way the discipline process may be expedited, with maximum opportunity for resolution of the matter and minimum opportunity for surprise. The broad definition given the word "document" is to ensure that all relevant material be disclosed. At this point, the solicitor's obligation to make disclosure stops, save and except for the disclosure of any expert reports that the solicitor will be relying upon at the hearing.

It is also urged by your Committee that a pre-hearing conference be mandatory at the request of either party to a Discipline Hearing. The efficacy of pre-trial hearings was lauded by certain members of your Committee and your Committee fully expects that the adoption of this process will lead to a more efficient discipline procedure.

Your Committee wishes to emphasize that in no way should these disclosure recommendations be seen to reduce a solicitor's obligation to cooperate with a Law Society investigation before the authorization of a formal complaint. It is meant to be seen as a compromise between the Society's mandate to protect the public and the presumption of innocence applicable to criminal proceedings. The burden of proof which the Society counsel must meet in a discipline prosecution approaches that of the criminal burden, i.e., beyond a reasonable doubt. This burden dictates that a full two-way disclosure would be inappropriate. Your Committee is satisfied, however, that these recommendations set out an appropriate balance between the member's rights and the public interest.

DISCIPLINE HEARING PANEL

- 1) THE DISCIPLINE HEARING PANEL SHALL:
 - a) MAKE A DECISION ON THE CHARGE OF PROFESSIONAL MISCONDUCT OR CONDUCT UNBECOMING A BARRISTER OR SOLICITOR; AND
 - b) IMPOSE THE APPROPRIATE PENALTY;
- 2) THE HEARING PANEL SHOULD BE CHOSEN IMPARTIALLY BY A "HEARINGS COORDINATOR";
- 3) THE SELECTION OF THE PANELISTS SHOULD BE MADE HAVING DUE REGARD FOR A JOINT REQUEST BY COUNSEL FOR A PANELIST WITH "PARTICULAR QUALIFICATIONS". IT SHOULD BE A POLICY OF THE LAW SOCIETY THAT SUCH REQUESTS WILL BE HONOURED WHEREVER POSSIBLE;
- 4) EACH DISCIPLINE HEARING PANEL SHALL CONSIST OF TWO ELECTED BENCHERS AND ONE LAY-PERSON, BENCHER OR OTHERWISE; AND
- 5) NON-BENCHER LAWYERS SHOULD NOT BE MEMBERS OF A DISCIPLINE HEARING PANEL.

One of the major issues for discussion with regard to the Discipline Hearing Panel was the inclusion of a layperson, Benchers or otherwise, on each and every Panel. It is suggested that the two main reasons for recommending the increased participation of laypersons in the discipline process are that,

- a) by so increasing the representation of laypersons, their role would be more visible and the Society would be less subject to criticism that it is operating a closed discipline process; and
- b) it would help reduce the heavy workload of the Benchers, but, as noted above, if lay-Benchers are included it will further increase their workload.

Once again, your Committee praised the work being done by past and present lay-Benchers on Discipline Hearing Panels and suggests that the role of laypersons on these panels should be expanded.

There was some significant discussion regarding the possible placement of non-Benchers lawyers on Discipline Hearing Panels. Those in favour of this recommendation argued strongly that to exclude non-Benchers lawyer representation would be to dispense with a broad range of experience that Convocation may not have. While not discounting the experience these non-Benchers lawyers might bring to the discipline process, your Committee takes that position that Benchers are elected to perform the discipline function and to recommend that non-Benchers lawyers sit on Discipline Hearing Panels would be to delegate improperly one of the chief responsibilities of Benchers. Given the recommendation of your Committee that a layperson sit on every Discipline Hearing Panel, it is of the opinion that the remaining two positions on every Discipline Hearing Panel should be filled by Benchers elected by the Profession.

The recommendation that the Discipline Hearing Panel be chosen impartially by a "Hearings Coordinator" is merely a formalization of the policy currently in place at the Society. This system has been working well and should be continued.

Many of those lawyers who made representation to your Committee were of the view that certain Discipline cases required a panel containing at least one member with special expertise in the area of concern. Examples of such areas are obvious and need not be expanded upon by your Committee at this stage. Your Committee is of the view that indeed there may be cases where at least one member of a panel should have particular expertise in the area of law in question. Accordingly, it recommends that upon a joint request by counsel, a request for a panelist with particular qualifications should be honoured wherever possible. However, this request should be made jointly in an effort to minimize the possibility or the perception of "panel shopping". Further, your Committee is of the view that cases requiring particular expertise will be obvious to both sides and accordingly, the requirement of a joint request is a reasonable one.

CHANGE OF COUNSEL

AFTER A DATE FOR A DISCIPLINE HEARING HAS BEEN SET, A NOTICE OF CHANGE OF SOLICITORS WILL BE REQUIRED WHERE COUNSEL OF RECORD IS DISCHARGED OR FOR WHATEVER REASON DECLINES TO ACT FOR THE SOLICITOR. THIS SHOULD BE ACCOMPLISHED BY WAY OF WRITTEN NOTICE AND AN APPEARANCE BY COUNSEL BEFORE A DISCIPLINE HEARING PANEL OR A ONE-MEMBER PANEL.

This procedure is meant to mirror the one currently in place in the courts where a solicitor of record is required to appear before that solicitor may be removed from the record. The purpose of this recommendation is self-evident. The Committee hopes that the implementation of this resolution will help ensure that hearings are not unduly or unnecessarily delayed due to a change of solicitors.

WITHDRAWAL OF COMPLAINTS

THE DISCIPLINE HEARING PANEL MUST HAVE CONTROL OF ITS OWN PROCESS AND THEREFORE, ONCE A PANEL BECOMES SEIZED OF A COMPLAINT, THE COMPLAINT MAY NOT BE WITHDRAWN WITHOUT THE CONSENT OF THAT PANEL. WHERE NO DISCIPLINE HEARING PANEL IS SEIZED OF A COMPLAINT, IT SHALL NOT BE WITHDRAWN WITHOUT THE CONSENT OF THE DISCIPLINE COMPLAINTS AUTHORIZATION COMMITTEE.

The purpose of this resolution is also self-evident. Your Committee is of the view that once a Discipline Hearing Panel is seized of a complaint, the reasons for the withdrawal of the complaint should be on the record and should be approved by the Panel. This would go some way toward demonstrating that the Society is not operating in a closed environment. Similarly, where a panel is not seized, the approval of the body that authorized the complaint in the first place should be obtained.

COSTS

THE DISCIPLINE HEARING PANEL SHOULD HAVE POWER TO AWARD COSTS AT ITS DISCRETION, ANY SUCH AWARD BEING SUBJECT TO APPEAL TO THE DESIGNATED PANEL OF CONVOCATION DESCRIBED HEREFTER.

The Committee is of the view that the Discipline Hearing Panel should be given the authority to award costs against either party where it deems it appropriate. Examples of instances where costs might be awarded are:

- a) Where a complaint is withdrawn;
- b) where insufficient disclosure was given requiring an adjournment of a hearing; and
- c) where a complaint has been found to have been unwarranted.

PENALTIES

A) THE FOLLOWING RANGE OF PENALTIES SHOULD BE AVAILABLE TO A DISCIPLINE HEARING PANEL:

- (i) DISBARMENT;
- (ii) PERMISSION TO RESIGN;
- (iii) SUSPENSION;
- (iv) INTERIM SUSPENSION;
- (v) FINES;
- (i) REPRIMANDS;
- (vii) ADMONITIONS.

B) A DISCIPLINE HEARING PANEL SHOULD BE AUTHORIZED TO IMPOSE MANDATORY ORDERS UPON A SOLICITOR ALONE OR IN CONJUNCTION WITH ANY OF THE APPROPRIATE PENALTIES LISTED ABOVE. SUCH ORDERS MAY REQUIRE THE SOLICITOR TO DO ANY ONE OR MORE OF THE FOLLOWING:

- (i) PERFORM MANDATORY COMMUNITY SERVICE;
- (ii) OBTAIN MEDICAL TREATMENT, INCLUDING DRUG OR ALCOHOL TESTING AND TREATMENT;
- (iii) UNDERGO PSYCHOLOGICAL TESTING;
- (iv) ENGAGE IN CONTINUING LEGAL EDUCATION PROGRAMS;

- (v) NOTIFY PARTNERS AND ASSOCIATES OF THE MEMBERS' DISCIPLINARY STATUS;
- (vi) ATTEND UPON LAW SOCIETY COMMITTEES OR AGENCIES SUCH AS THE PROFESSIONAL STANDARDS COMMITTEE OR THE PRACTICE ADVISORY;
- (vii) RESTRICT PRACTICE TO SPECIFIED AREAS OF LAW OR OTHER SPECIFIED CONDITIONS;
- (viii) MAINTAIN A SPECIFIC TYPE OF TRUST ACCOUNT OR A TRUST ACCOUNT FOR LIMITED PURPOSES;
- (ix) ACCEPT SPECIFIED CO-SIGNING CONTROLS;
- (x) ACCEPT ANY OTHER REQUIREMENT THAT TO THE DISCIPLINE HEARING PANEL SEEMS JUST AND REASONABLE IN THE CIRCUMSTANCES;

THE PENALTIES LISTED ABOVE AND THE MANDATORY ORDERS SUGGESTED ARE NOT MEANT TO BE EXHAUSTIVE, BUT ONLY AN INDICATION OF YOUR COMMITTEE'S BELIEF THAT THE DISCIPLINE HEARING PANEL SHOULD HAVE AS MUCH FLEXIBILITY AS POSSIBLE IN IMPOSING PENALTIES AND ASSISTING IN THE REHABILITATION OF THE SOLICITOR.

(C) YOUR COMMITTEE RECOMMENDS THAT ALL ADMONITIONS AND REPRIMANDS ARE TO BE DELIVERED IN PUBLIC WHERE THE HEARING HAS BEEN HELD IN PUBLIC. FURTHER, IN THE CASE OF REPRIMANDS, THESE SHALL BE PUBLISHED;

(D) YOUR COMMITTEE RECOMMENDS THAT ANY REPRIMAND OR ADMONITION ARISING FROM AN IN-CAMERA HEARING SHALL BE DELIVERED IN PUBLIC UNLESS CAUSE CAN BE SHOWN IN THE ORDINARY WAY WHY IT SHOULD BE DELIVERED IN-CAMERA.

E) YOUR COMMITTEE RECOMMENDS THAT A SOLICITOR INVOLVED IN A DISCIPLINARY PROCEEDING SHOULD NOT BE ASKED TO WAIVE A RIGHT OF APPEAL. THIS PRACTICE OF REQUESTING A WAIVER IS CURRENTLY IN PLACE WITH REGARD TO SOLICITORS WHO ARE REPRIMANDED IN COMMITTEE; HOWEVER, YOUR COMMITTEE FEELS THAT THE PRACTICE IS UNFAIR AND UNNECESSARY.

The majority of the penalties and mandatory orders listed above are self-explanatory; however, a few of them warrant special comment. The power to order an interim suspension is one needed by the Discipline Hearing Panel to deal effectively with those situations where the solicitor's alleged conduct is such that to allow the solicitor to practise during the course of the discipline proceedings may be inconsistent with the Society's responsibility to protect the public. Such a power does not currently exist.

Your Committee notes that the concept of a reprimand in Convocation no longer fits into the discipline scheme envisioned by your Committee and accordingly, recommends that it be abolished. Your Committee recommends that all reprimands be delivered in public where the hearing has been held either in public or in-camera, except in those cases where a Discipline Hearing Panel is convinced that a reprimand should be delivered in-camera and the hearing was held in-camera. Once again, the goal of your Committee is to achieve a higher level of visibility and public accessibility and to deflect any criticism that the Society operates in a closed fashion.

Your Committee recommends that there be publication of the names of lawyers who have been reprimanded, for example, in the "buff pages" of the Ontario Reports. Your Committee appreciates that in some situations the publication of the finding of misconduct may be unnecessary or inappropriate (for instance, on compassionate grounds). Accordingly, it recommends the creation of the penalty of admonition which, while delivered in public by the Discipline Hearing Panel, is not published.

The mandatory orders enumerated above are intended to give the Discipline Hearing Panel flexibility and creativity in sanctioning a solicitor found guilty of professional misconduct or conduct unbecoming. It is envisioned that these terms will assist a solicitor in correcting the problem that has brought the solicitor before the Discipline Hearing Panel. The Society's role should be not only to sanction, but also to assist an offending solicitor. Where a solicitor is found to not have complied with a mandatory order of the Discipline Hearing Panel, that breach of an order of the Discipline Hearing Panel must be the subject of further appropriate discipline proceedings.

Your Committee briefly discussed the concept of sanctions against law firms in light of the proposal of the Ontario Securities Commission to sanction itself lawyers and/or law firms for violation of its own legislation. It is felt by your Committee that the question of discipline proceedings against law firms should initially be dealt with by the Professional Conduct Committee. Any rules or guidelines developed by the Professional Conduct Committee and approved by Convocation could then be superimposed on the Law Society discipline procedure in place at that time.

REVIEW OF DISCIPLINE HEARING PANEL

- 1) AN APPEAL FROM A DISCIPLINE HEARING PANEL'S FINDINGS AS TO MISCONDUCT AND PENALTY SHOULD LIE TO A DESIGNATED APPEAL PANEL OF CONVOCATION CONSISTING OF FIFTEEN BENCHERS WITH A QUORUM CONSISTING OF NINE BENCHERS;
- 2) THERE SHALL BE AT LEAST TWO LAY-BENCHERS SITTING ON THIS DESIGNATED APPEAL PANEL OF CONVOCATION AT ALL TIMES;
- 3) THIS DESIGNATED APPEAL PANEL OF CONVOCATION SHALL HAVE A SET MEMBERSHIP WHICH WOULD SIT FOR A TERM OF ONE-YEAR;
- 4) THIS DESIGNATED APPEAL PANEL OF CONVOCATION SHALL BE DESIGNATED BY THE TREASURER AND APPROVED BY CONVOCATION;
- 5) THE WHOLE OF CONVOCATION WOULD NO LONGER CONVENE FOR DISCIPLINE MATTERS;
- 6) THIS DESIGNATED APPEAL PANEL OF CONVOCATION SHALL HAVE A REVOLVING CHAIR AND THE CHAIR SHALL HAVE A VOTE;
- 7) THE GROUNDS FOR APPEAL TO THE DESIGNATED APPEAL PANEL OF CONVOCATION SHALL BE ERRORS OF FACT OR LAW AND IT SHALL HAVE THE AUTHORITY TO ALLOW THE APPEAL, DISMISS THE APPEAL OR SUBSTITUTE A DIFFERENT FINDING OR PENALTY;
- 8) THERE SHALL BE NO APPEAL FROM THIS DESIGNATED APPEAL PANEL OF CONVOCATION; AND
- 9) NO BENCHER SHALL SIT ON THIS DESIGNATED APPEAL PANEL OF CONVOCATION ON AN APPEAL FROM A DISCIPLINE HEARING PANEL ON WHICH THE BENCHER SAT.

The question of the appropriate body to hear a review or appeal from a Discipline Hearing Panel took up a considerable amount of your Committee's time, having been thoroughly debated on several occasions. Until very late in its deliberations, your Committee had considered two very different options to deal with appeals from the Discipline Hearing Panel; one reflecting largely the status quo (with refinement) and the other suggesting the creation of a new panel of Benchers that would function essentially as an Appeal Tribunal. Your Committee believes that for the purpose of having a complete record, these two options and the arguments supporting them should be set out in this report.

A) It was argued by some members of your Committee that the procedure laid down in sections 33, 34 and 44 of the Law Society Act, when properly understood and followed, is quite workable. The great objection to the practice that has developed is the excessive amount of time that is taken up in Convocation with discipline matters.

The reason for this is that when a Discipline Report comes before Convocation, there is confusion as to whether Convocation is sitting as an appellate body or is limited simply to determining the penalty imposed on the guilty solicitor. It was argued that Convocation does not have, and should not have, appellate jurisdiction over the "decision" of the Committee with regard to a finding of professional misconduct or conduct unbecoming. This does not exclude the exercise of jurisdiction akin to judicial review if the decision was patently in error on its face and natural justice required that it be rejected. This, however, would be the exceptional case.

The language of the Act is explicit and in no way ambiguous. Subsection 33 (1) may be summarized as follows:

No disciplinary action under sections 34, 35, 37 or 38 (that is to say by Convocation) shall be taken unless....(c) a committee has reached the decision that he/she (the person subject to the complaint) is guilty.

Subsection 33 (12) may be summarized as follows:

The decision shall be in writing accompanied by reasons setting out the findings of fact and conclusion of law and that the guilty solicitor shall be given notice of the solicitor's right of appeal.

The Act provides for two appeal routes only. One is if the solicitor has been reprimanded in the Committee under section 37. In that case, the solicitor may appeal to Convocation under section 39. If Convocation confirms the decision of the Committee under subsection 39 (5), that is the end of the matter. If Convocation increases the penalty, the solicitor may appeal to the Divisional Court under section 44. There is a lacuna in the statutory procedure when the Committee chooses not to impose the penalty of a reprimand on a solicitor who has been found guilty (i.e. where any recommendation as to penalty is made to Convocation). There is no direction that its decision shall be delivered to Convocation for the imposition of an appropriate penalty. It is implicit in section 34, however, that this is the next step. That section assumes that the decision of the Committee is before Convocation and provides that Convocation may "by order" impose a penalty. Subsection 44 (1) states that:

"the solicitor may appeal from that order to the Divisional Court".

There is no provision in the Act for an appeal to Convocation from the decision of the Committee in the case where the Committee has not itself reprimanded the solicitor. It is clear from succeeding subsections of section 44 that the appeal to the Divisional Court is from both the decision of the Committee and the Order of Convocation and is similar to an appeal from a decision of a Trial Judge in a court of law. The confusion and misunderstanding regarding Convocation's function is the result of the language used in Section 9 of Regulation 573. This regulation was promulgated in 1970 more or less contemporaneously with the passage of the revised Act of that year, but appears to give expression to the procedure that has been followed. Under that procedure, the Committee merely reported its findings to Convocation and Convocation made the decision as to guilt or innocence (see subsection 6). The regulation provides that the

solicitor be told that the solicitor can dispute findings of fact by the Committee before Convocation, that is to say, that Convocation has an appellate function. This is not correct and the regulation should be amended to bring it into conformity with the Act.

A criticism of the current appeal procedure is that Convocation might find itself considering what penalty to impose on a solicitor who wants to appeal from the decision of the Committee. Until such an appeal had been heard and determined, it would seem to be pointless to discuss penalty, but the solicitor's right of appeal arises only after the order for penalty has been made. Possibly, consideration should be given to providing that the solicitor should have the right to appeal immediately to the Divisional Court from a decision of a Committee. If unsuccessful, the matter would then go to Convocation for penalty.

The members of the Committee making these arguments based their support of this option and their opposition to the other option then being considered by your Committee on two major grounds. The first is that a court is the best and most appropriate tribunal to hear an appeal from a decision of a Discipline Committee of first instance. That is a judicial activity pure and simple. Judges are trained and experienced in the art and their impartiality is assured. Without denigrating the personal capacities of the potential members of a Discipline Review Tribunal composed of Benchers, there can be no comparison between their fitness to function as an Appellate Tribunal and that of a court. The second ground is that it is the function and responsibility of the Benchers as a body to determine the penalty that should be imposed on a member found guilty of professional misconduct or conduct unbecoming. It is vital to the independence of the profession that it discipline its members. The Benchers are the governing body and should not resile from exercising that responsibility which can only properly be performed by the Bench as a whole. The Bench taken as a whole includes a cross-section of the profession, including representation by gender, experience, type and location of practice. The profession is entitled to expect to be dealt with by its elected governing body and not by some lesser body. Any proposal that removes from the Benchers the authority to impose penalty may well be seen by the profession and the public to be an abandonment of responsibility by the Benchers. The profession has not indicated any dissatisfaction with Convocation imposing penalty and it may be observed that appeals from Convocation's decisions are seldom launched.

A proposal that would reduce the number of eligible Benchers from its present state to a lower number deprives the other Benchers of the responsibility with which they have been entrusted by the profession. The wide range of experience held by the Benchers has in the past served the profession and the public well.

B) The second option then being considered by your Committee was that of a Discipline Appeal Tribunal (now referred to in your Committee's recommendation as a Designated Appeal Panel of Convocation) consisting of a Panel of nine Benchers, at least two of whom would be lay-Benchers, with a quorum of five and a minimum of one lay-Bencher. This Panel would be appointed by the Treasurer and approved by Convocation for a term of one year. Those Benchers serving on this Panel would be exempted from all other disciplinary responsibilities. The function of the Discipline Appeal Tribunal would be to hear appeals by either party from findings and/or penalties imposed by the Discipline Hearing Panel. These appeals would be on the record and not by way of a trial *de novo*. The Discipline Appeal Tribunal's decision would be final, subject to judicial review. It was argued that the current procedure was subject to a variety of criticism, among which, that it was procedurally hazy, inconsistent and

unpredictable. It was noted that those solicitors making submissions to your Committee, by and large shared these criticisms. Under this model, Benchers would not be shirking part of their elected responsibilities as they would still be serving in an appellate function. Restricted or smaller panels are found everywhere. For instance, in the Court of Appeal one does not get the benefit of a hearing before all of the members of that Court. It was argued that efficiency dictated smaller panels. It was also argued that the creation of a Discipline Appeal Tribunal would allow the development of expertise and consistency in discipline matters.

The workload of Benchers and the number of complaints of professional misconduct can reliably be predicted to increase over the next several years, as they have in the last several years, since the Barr Committee's Report in 1983. The Barr Committee cited the increasing number of practitioners in the province, the continuing squeeze between decreasing revenues and increasing costs, improved "policing" and new standards as reasons for the increase in the number of complaints of professional misconduct or conduct unbecoming. It was emphasized that the latter two factors are of particular importance in 1990.

As the number of complaints increases it will become increasingly impractical for Convocation to sit in plenary session to review all reports of Discipline Hearing Panels in which a recommendation of a penalty at least as severe as a reprimand is made. Secondly, if Convocation is restricted to determining issues of penalty, (as is argued by those supporters of Option "A") a system featuring the nine Bencher Discipline Review Tribunal, whose members sit for a period of one year to determine the issues of both professional misconduct or conduct unbecoming and penalty, is likely to be considerably more conducive to the evolution of a consistent body of jurisprudence than is the other system described in Option A above.

Your Committee subscribes to the argument that there are many benefits to creating a specific Panel of Benchers to deal with appeals from the Discipline Hearing Panels, but also agrees that the benefit of the experience of a wide range of elected and appointed Benchers should not be discounted. Accordingly, it has recommended that a Designated Appeal Panel of Convocation consisting of fifteen Benchers be appointed for a one-year term to deal exclusively with appeals from the Discipline Hearing Panels. The Committee concluded that an appeal should be available to either party to the hearing on a question of fact or law. While the legislation currently provides for an "appeal" from Convocation, your Committee is of the view that this "appeal" has, in fact, meant judicial review as the Divisional Court has almost always dealt with appeals from Convocation in that fashion. Accordingly, your Committee feels that this reference to an "appeal" should be removed, the consequence of which would be to leave the Divisional Court with its statutory jurisdiction of judicial review.

By creating a Designated Appeal Panel of Convocation to hear appeals, your Committee believes that Convocation will thus remain the ultimate body deciding the fate of a solicitor facing disciplinary proceedings. Elected and appointed Benchers would be fulfilling their mandate, albeit on a revolving basis.

Your Committee also believes that this proposal addresses many of the concerns raised by those lawyers who made submissions to your Committee with regard to the unwieldy, unpredictable and sometimes inconsistent functioning of Convocation as a whole. It is expected that by reducing the number of Benchers participating on the Designated Appeal Panel of Convocation, the process will become more efficient and effective.

The requirement that there always be two lay-Benchers on the Designated Appeal Panel of Convocation again, ensures lay-input into the discipline process, the benefits of which need not again be set out by your Committee.

It is appreciated by your Committee that this recommendation is a significant one. However, it is not that much of a departure from the current situation in that Convocation will still retain ultimate authority over the disciplining of the members of the legal profession. The improvements as recommended above will enable Convocation to fulfill this responsibility in a more efficient and consistent manner.

MINOR OFFENCE PROCEDURE

THERE SHOULD BE A CLASS OF MINOR OFFENCES THAT MAY BE DEALT WITH BY A ONE-MEMBER PANEL, WITH SAFEGUARDS PUT IN PLACE WITH RESPECT TO THE TYPE OF OFFENCE, PROCEDURE AND RANGE OF PENALTIES AVAILABLE, AS WELL AS TRANSFERABILITY BY EITHER PARTY OR THE ONE-MEMBER PANEL TO A FULL DISCIPLINE HEARING PANEL.

Much Benchers time is spent on what are essentially minor disciplinary proceedings involving most commonly a member's failure to reply to Law Society correspondence and the failure of a member to file a Form 2/3. With a view toward more efficient use of Benchers time, your Committee urges the creation of a one-member panel to deal with these minor offences. While it is currently anticipated that the vast majority of these matters would be failure to reply and failure to file a Form 2/3, the full range of offences and penalties available should be developed and specific guidelines drawn up. Your Committee is of the view, however, that the appeal procedure should be the same as that recommended for the Discipline Hearing Panel. Also significant in this recommendation is the ability of either party or the one-member panel to transfer a matter to a full Discipline Hearing Panel where it becomes apparent that the one-member panel is not the appropriate forum to hear a particular authorized discipline complaint.

JURISPRUDENCE

PAST DECISIONS OF DISCIPLINE COMMITTEES SHOULD BE COMPILED AND MADE AVAILABLE TO INTERESTED PERSONS. FURTHER, ALL DISCIPLINE HEARING PANELS FROM THIS POINT ON SHOULD BE REQUIRED TO PREPARE WRITTEN REASONS FOR THEIR DECISIONS OR ORAL REASONS FOR THEIR DECISIONS ON THE RECORD, IN ALL CASES INCLUDING THOSE WHERE THE COMPLAINT IS DISMISSED OR A REPRIMAND OR ADMONITION IS IMPOSED.

One of the most consistent criticisms of the current discipline procedure leveled by those solicitors making submissions to your Committee was that of a lack of available jurisprudence to assist defence counsel. Your Committee agrees with this criticism.

INCAPACITY

THE FOLLOWING MODEL IS PROPOSED BY YOUR COMMITTEE TO DEAL WITH QUESTIONS OF A MEMBER'S INCAPACITY TO PRACTICE LAW:

- 1) THE SECRETARY OF THE LAW SOCIETY MAY REFER A MATTER TO THE HEARINGS COORDINATOR WHERE THE SECRETARY IS SATISFIED THAT THERE IS CONCERN ABOUT A MEMBER'S CAPACITY TO PRACTICE LAW.
- 2) THE HEARINGS COORDINATOR SHALL SELECT A BENCHER AS A ONE-MEMBER PANEL WHO SHALL DETERMINE WHETHER AN INVESTIGATION INTO A MEMBER'S CAPACITY IS WARRANTED AND, IF SO, ORDER SUCH AN INVESTIGATION.
- 3) THE ONE-MEMBER PANEL SHALL REVIEW THE EVIDENCE OBTAINED IN THE INVESTIGATION AND, IF WARRANTED, MAY REFER THE MATTER TO THE CHAIR OF THE PROFESSIONAL STANDARDS COMMITTEE FOR A HEARING.
- 4) WHEN IN RECEIPT OF THE REPORT OF THE ONE-MEMBER PANEL, THE CHAIR OF THE PROFESSIONAL STANDARDS COMMITTEE SHALL APPOINT A THREE-MEMBER FITNESS TO PRACTICE PANEL WHO MAY, WHERE THEY HAVE REASONABLE GROUNDS TO BELIEVE THAT A MEMBER'S CAPACITY TO PRACTICE LAW IS IN DOUBT, ORDER THAT MEMBER TO UNDERGO A MEDICAL OR PSYCHIATRIC EXAMINATION. IF A MEMBER FAILS TO COMPLY WITH THAT ORDER, THE MEMBER MAY BE SUSPENDED.

5) AFTER CONDUCTING A HEARING, THE FITNESS TO PRACTICE PANEL SHALL MAKE A FINDING THAT EITHER THE MEMBER IS:

- A) NOT INCAPACITATED; OR
- B) INCAPACITATED, AND IN THE LATTER EVENT, THE FITNESS TO PRACTICE PANEL SHALL MAKE A DISPOSITION OF THE MATTER.

6) WHERE THE FITNESS TO PRACTICE PANEL HAS FOUND A MEMBER TO BE INCAPACITATED, IT MAY BY ORDER LIMIT OR SUSPEND THE MEMBER'S RIGHTS AND PRIVILEGES AS A MEMBER FOR SUCH TIME AND ON SUCH TERMS THAT IT CONSIDERS JUST IN THE CIRCUMSTANCES, AND IN ADDITION IT MAY ORDER THE SOLICITOR TO DO ANY ONE OR MORE OF THE FOLLOWING;

- A) OBTAIN MEDICAL TREATMENT, INCLUDING DRUG OR ALCOHOL TESTING AND TREATMENT;
- B) UNDERGO PSYCHOLOGICAL TESTING;
- C) ENGAGE IN CONTINUING LEGAL EDUCATION PROGRAMS;
- D) NOTIFY PARTNERS AND ASSOCIATES OF THE SOLICITOR'S DISCIPLINE STATUS;
- E) ATTEND UPON LAW SOCIETY COMMITTEES OR AGENCIES SUCH AS THE PROFESSIONAL STANDARDS COMMITTEE OR THE PRACTICE ADVISORY COMMITTEE;
- G) RESTRICT PRACTICE TO SPECIFIED AREAS OF LAW OR OTHER SPECIFIED CONDITIONS;
- H) MAINTAIN A SPECIFIC TYPE OF TRUST ACCOUNT OR A TRUST ACCOUNT FOR LIMITED PURPOSES;
- I) ACCEPT SPECIFIED CO-SIGNING CONTROLS;
- J) ACCEPT ANY OTHER REQUIREMENT THAT TO THE FITNESS TO PRACTICE PANEL SEEMS JUST AND REASONABLE IN THE CIRCUMSTANCES.

7) THE REPORT OF THE FITNESS TO PRACTICE PANEL MAY BE APPEALED TO THE DESIGNATED APPEAL PANEL OF CONVOCATION.

8) THERE WILL BE NO APPEAL FROM THE DESIGNATED APPEAL PANEL OF CONVOCATION. HOWEVER, JUDICIAL REVIEW BY THE DIVISIONAL COURT WILL BE AVAILABLE.

9) A PROCEDURE SIMILAR TO THAT CURRENTLY IN PLACE FOR RE-ADMISSION OF A MEMBER (AS OUTLINED IN SECTION 47 OF THE LAW SOCIETY ACT) SHOULD BE PUT INTO PLACE.

10) A DISCIPLINE HEARING PANEL MAY REFER A MATTER TO THE FITNESS TO PRACTICE PANEL AND THE DISCIPLINE HEARING SHALL BE HELD IN ABEYANCE UNTIL THE FITNESS HEARING HAS BEEN COMPLETED.

The current practice of treating questions of incapacity as matters to be dealt with in the discipline stream is no longer acceptable or appropriate. The goal of the proposals outlined above is to create a new process whereby questions of a member's capacity to practise law are treated exactly as that, and not as a matter for discipline. This is accomplished in part by transferring the responsibility of determining capacity to a panel appointed by the Chair of the Professional Standards Committee, a more appropriate Committee to determine this issue. The responsibility of the Society to protect the public is here coupled with the Society's obligation to locate those

members demonstrating an incapacity to carry on the practice of law due to some form of infirmity. Further, those dispositions available to a Fitness to Practice Panel are meant to afford the Panel flexibility and creativity in assisting a member found to be working under an incapacity.

PUBLICATION OF COMPLAINTS

- 1) THE SOCIETY SHOULD DISCONTINUE ITS CURRENT PRACTICE OF ISSUING PRESS RELEASES ANNOUNCING DISCIPLINE PROCEEDINGS AGAINST AN UNNAMED MEMBER IN A GENERAL GEOGRAPHICAL LOCATION;
- 2) THE SOCIETY SHOULD NOT TAKE POSITIVE STEPS TO PUBLISH A LIST OF AUTHORIZED DISCIPLINE COMPLAINTS, BUT THAT INFORMATION SHOULD BE MADE AVAILABLE UPON REQUEST;
- 3) ON A WEEKLY BASIS, A LIST OF CASES TO BE HEARD BY A DISCIPLINE HEARING PANEL OR THE DESIGNATED APPEAL PANEL THAT WEEK SHOULD BE MADE AVAILABLE TO THE PUBLIC;
- 4) A COPY OF THE AUTHORIZED DISCIPLINE COMPLAINTS THEMSELVES SHOULD BE MADE AVAILABLE TO THE PUBLIC UPON REQUEST AT ANY STAGE AFTER AUTHORIZATION;
- 5) THE WEEKLY LIST OF UPCOMING AUTHORIZED DISCIPLINE COMPLAINTS HEARINGS AND APPEALS SHOULD INCLUDE THE NAME AND LOCATION OF THE SOLICITOR, AS WELL AS THE NATURE OF THE COMPLAINT;
- 6) ALL MATTERS TO BE HEARD BY THE DISCIPLINE HEARING PANEL OR THE DESIGNATED APPEAL PANEL ON A PARTICULAR DAY (INCLUDING FIRST APPEARANCES, MATTERS TO BE SPOKEN TO AND HEARINGS) SHOULD BE LISTED AND MADE AVAILABLE TO THE PUBLIC.

As Convocation has accepted the concept of open Discipline Hearings, it is fitting that the Society should be prepared to respond fully to any inquiry from the public regarding the existence and status of discipline proceedings against a member once a complaint has been authorized.

PUBLICATION OF DECISIONS AND REPORTS OF THE DISCIPLINE HEARING PANEL

IN-CAMERA HEARINGS

THE REASONS FOR DECISION OF THE DISCIPLINE HEARING PANEL SHOULD REFLECT THE REASONS FOR ORDERING AN IN-CAMERA HEARING IN THE FIRST INSTANCE. THE WORD "DECISION" IS MEANT TO INCLUDE THE DISPOSITION OF AN AUTHORIZED DISCIPLINE COMPLAINT AND REASONS THEREFORE.

PUBLIC HEARINGS

YOUR COMMITTEE RECOMMENDS THAT THE REASONS FOR DECISION SHOULD BE MADE PUBLIC, SUBJECT TO ANY POWER THAT THE SOCIETY MAY HAVE IN THE FUTURE TO MAKE AN ORDER FOR NON-PUBLICATION. IT WAS AGREED BY YOUR COMMITTEE THAT THE SOCIETY SHOULD SEEK THE POWER TO MAKE SUCH AN ORDER FOR NON-PUBLICATION. FURTHER, THAT THE LAW SOCIETY ACT SHOULD BE AMENDED WITH REGARD TO THE IN-CAMERA HEARING SO AS TO BRING IT INTO COMPLIANCE WITH THE STATUTORY POWERS AND PROCEDURES ACT

Your Committee's recommendation that the Reasons for Decision of the Discipline Hearing Panel be published is intended once again to recognize the necessity of opening the discipline process as much as possible. Your Committee recognizes, however, that there may exist circumstances where such publication would be inappropriate and it has attempted to accommodate this possibility in its recommendations.

Further, your Committee envisions the occasional case where an order for non-publication would be appropriate. This power currently does not lie with the Society, however, steps should be taken to remedy this situation.

HOLDING DISCIPLINE HEARINGS IN ABEYANCE PENDING CONCURRENT CIVIL OR CRIMINAL PROCEEDINGS

CRIMINAL PROCEEDINGS

WHERE THE FACTS GIVING RISE TO CONCURRENT CRIMINAL CHARGES AND THE LAW SOCIETY AUTHORIZED DISCIPLINE COMPLAINT ARE SIMILAR AND ARISE FROM THE MEMBER'S PRACTICE OF LAW, YOUR COMMITTEE RECOMMENDS THAT THE POLICY OF THE SOCIETY SHOULD BE TO PROCEED WITH THE DISCIPLINE HEARING EXPEDITIOUSLY, SUBJECT TO THE DISCRETION OF THE DISCIPLINE HEARING PANEL. WHERE THE FACTS DO NOT ARISE FROM THE MEMBER'S PRACTICE, BUT SUGGEST CONDUCT UNBECOMING A MEMBER, THE SOCIETY MAY AWAIT THE DECISION OF THE CRIMINAL COURT.

CIVIL PROCEEDINGS

THE SAME RULE AS DISCUSSED ABOVE APPLY TO CONCURRENT CIVIL PROCEEDINGS.

Currently, the Discipline Department will proceed with a Discipline Hearing where the facts in issue in the Discipline Hearing are similar to those of a criminal proceeding. It is suggested by your Committee that the public interest necessitates the hearing of such cases on an urgent basis and that the duty the Society owes to the public dictates that the Society should proceed with these hearings as soon as it is able to do so (subject to the discretion of the Discipline Hearing Panel). Where the alleged criminal offence does not arise from the member's practice, there is less urgency to proceed and, accordingly, the Society should await the decision of the Criminal Court (again, subject to the discretion of the Discipline Hearing Panel).

Similarly, to defer Discipline Hearings in the face of civil proceedings often seriously prejudices the Discipline Hearing because civil matters are generally much more protracted. The public interest may be no less at risk in the face of such civil proceedings and, accordingly, your Committee is of the view that the same rule applicable to criminal proceedings should be made to apply to civil proceedings as well.

DISCIPLINE PROCEDURE GUIDELINES

DISCIPLINE PROCEDURE GUIDELINES SHOULD BE PREPARED BY THE SOCIETY AND MADE AVAILABLE TO THE PROFESSION AS WELL AS TO THE PUBLIC. FOR THE PROFESSION, THE GUIDELINES SHOULD FORM PART OF THE LAW SOCIETY "MANUAL" WHICH ALSO INCLUDES, INTER ALIA THE LAW SOCIETY ACT AND THE RULES OF PROFESSIONAL CONDUCT.

Many of the lawyers who made submissions to your Committee encouraged the preparation of Discipline Procedure Guidelines. Your Committee agrees and is of the view that such guidelines would help to de-mystify the discipline process for both the profession and the public.

COMPLAINTS AGAINST THE SOCIETY - BENCHERS AND SOCIETY STAFF

COMPLAINTS AGAINST BENCHERS

THE FOLLOWING MODEL IS PROPOSED BY THE COMMITTEE TO DEAL WITH COMPLAINTS AGAINST BENCHERS:

- 1) ALL COMPLAINTS RECEIVED AGAINST BENCHERS SHALL BE REFERRED TO THE COMPLAINTS RESOLUTION OFFICER (C.R.O.). THE C.R.O., AS ENVISIONED BY THE CALLWOOD COMMITTEE, WILL INDEPENDENTLY REVIEW CASES WHERE LAWYERS REFUSE TO COMPLY WITH STAFF SUGGESTIONS TO REMEDY ISOLATED CASES OF UNSATISFACTORY PROFESSIONAL PRACTICE. THE C.R.O. WILL BE INDEPENDENT OF THE LAW SOCIETY AND COULD BE A RETIRED JUDGE, LAWYER OR A LAY-PERSON WELL VERSED IN THE LAW.
- 2) THE C.R.O. SHALL RETAIN INDEPENDENT COUNSEL TO INVESTIGATE AND REPORT TO HIM OR HER ON THE COMPLAINT.
- 3) UPON RECEIVING THE REPORT OF INDEPENDENT COUNSEL, THE C.R.O. MAY REFER THE COMPLAINT TO THE COMPLAINTS AUTHORIZATION COMMITTEE.
- 4) THE DISCIPLINE COMPLAINTS AUTHORIZATION COMMITTEE MAY AUTHORIZE A FORMAL COMPLAINT AGAINST THE BENCHER; HOWEVER, WHERE THE AUTHORIZATION IS REJECTED, IT SHALL GIVE REASONS.
- 5) IN SITUATIONS WHERE THE DISCIPLINE COMPLAINTS AUTHORIZATION COMMITTEE REJECTS A REQUEST FOR AUTHORIZATION BUT DOES AUTHORIZE A LESSER FORMAL COMPLAINT, CARE SHOULD BE TAKEN IN THE REASONS OF THE COMMITTEE NOT TO PREJUDICE A FAIR HEARING OF THE LESSER FORMAL COMPLAINT.
- 6) A FORMAL DISCIPLINE HEARING AGAINST A BENCHER SHALL BE PROSECUTED BY OUTSIDE COUNSEL RETAINED BY THE C.R.O., BUT OTHERWISE SHALL BE HEARD AS ANY OTHER AUTHORIZED DISCIPLINE COMPLAINT AGAINST A MEMBER OF THE LAW SOCIETY.
- 7) THE INDEPENDENT COUNSEL PROSECUTING AN AUTHORIZED DISCIPLINE COMPLAINT SHALL HAVE FULL AUTHORITY TO PROSECUTE AND APPEAL INDEPENDENTLY OF THE LAW SOCIETY STAFF AND BENCHERS.

Note: Motion, see page 68

COMPLAINTS AGAINST STAFF LAWYERS

- 1) WHERE A COMPLAINT AGAINST A STAFF LAWYER SUGGESTS THAT THE LAWYER IS GUILTY OF PROFESSIONAL MISCONDUCT OR CONDUCT UNBECOMING, THE COMPLAINT SHALL BE DEALT WITH AS IF IT WERE A COMPLAINT AGAINST A BENCHER, FOLLOWING THE PROCEDURE AS OUTLINED ABOVE.

Note: Amendment, see page 68

This resolution is intended to ensure that any complaint received by the Society against a Benchers or a staff lawyer is dealt with and is seen to be dealt with in a fair and independent manner. All such complaints will be referred to the Complaints Resolution Officer, an office whose creation is recommended by the Callwood Committee and whose purpose is to be an impartial and independent body who will review complaints. The use of independent counsel is recommended as your Committee is of the view that such investigations of Benchers or staff lawyers should not be conducted internally. The authorization process, however, should remain the same as that for any other member. The presence of a non-Benchers lawyer and a lay-Benchers on the Discipline Complaints Authorization Committee, in your Committee's opinion, will enable it to review the request for an authorization in an independent fashion. Further, the requirement that this Committee give reasons will help ensure that a complaint against a Benchers is handled fairly.

With regard to the Discipline Hearing, your Committee is of the view that a normally constituted Discipline Hearing Panel, receiving evidence and submissions in an open hearing, sufficiently meets the requirement of openness and is the appropriate body to deal with complaints against Benchers and staff lawyers.

26th October, 1990

Your Committee recognizes that it is unusual for counsel not to take instructions from a client. However, in the case of independent counsel prosecuting complaints against Benchers or staff lawyers, your Committee is of the view that this unusual step must be taken. Independent counsel must be free to make all decisions regarding all facets of the prosecution, including Agreed Statements of Fact and appeals, in order to guarantee that all such decisions are made and are seen to be made in the public interest.

SWEARING OF COMPLAINTS

DISCIPLINE COMPLAINTS SHOULD NOT BE SWORN, BUT SHOULD BE SIMPLY SIGNED BY THE CHAIR OF THE COMPLAINTS AUTHORIZATION COMMITTEE ON BEHALF OF THE DISCIPLINE COMPLAINTS AUTHORIZATION COMMITTEE.

Note: Motion, see page 68

Your Committee makes this recommendation with a view toward updating the procedure currently followed by the Law Society in issuing formal discipline complaints. There is no compelling reason why formal discipline complaints need to be sworn. In light of the recommendations for a Discipline Complaints Authorization Committee, this additional safeguard is no longer needed.

INELIGIBLE COUNSEL

1) THE POLICY ADOPTED BY CONVOCATION PROHIBITING LAWYERS FROM BENCHER FIRMS FROM APPEARING AS COUNSEL BEFORE DISCIPLINE PANELS SHOULD NOT BE ABANDONED.

Note: Amendment, see page 68

2) A BENCHER SHALL NOT SIT ON ANY DISCIPLINE MATTER WHERE COUNSEL OF RECORD IS A PARTNER, ASSOCIATE OR EMPLOYEE OF HIS/HER LAW FIRM.

Note: Motion, see page 68
Amendment, see page 68

The current prohibition of lawyers from Bencher firms from appearing as counsel before Discipline Panels is, in your Committee's view, unnecessarily severe. The Society's duty to be fair to its members demands the revocation of a rule that has the effect of limiting severely the right of solicitors involved in the discipline process to select as their counsel many of the lawyers most capable of presenting them. The safeguard built into this resolution (paragraph 2 above) sufficiently and more fairly addresses the concerns of Convocation in adopting this policy in the first instance.

CLOSING NOTES

Your Committee recognizes that many of the recommendations in this Report will require amendments to the current Law Society Act and regulations, as well as procedural clarification. Accordingly, Convocation is asked to direct this Report to the Legislation and Rules Committee for the purpose of preparing draft amendments.

Finally, your Committee hopes for the cooperation of the Attorney General in promptly effecting the legislative changes necessitated by Convocation's approval of this Report.

DATE:

"Roger Yachetti"
Roger D. Yachetti
Chair
Special Committee on
Discipline Procedures

Attached to Report in Convocation file, copy of:

- (1) Special Committee on Discipline Procedures - Terms of Reference.
(Appendix I, pages 1 - 2)
- (2) Special Committee on Discipline Procedures - oral and written
comments. (Appendix 2)
- (3) Special Committee on Discipline Procedures - issues for
consideration. (Appendix 3, pages 1 - 4)

It was moved by Mr. Yachetti, seconded by Ms. Kiteley that the Recommendation on pages 41 and 42 regarding Complaints against Benchers be adopted.

Carried

It was moved by Mr. Yachetti, seconded by Ms. Kiteley that on page 43, paragraph 1 of the Report under Complaints against Staff Lawyers, the words "is received" and "which" be added so that the paragraph now reads "Where a complaint is received against a staff lawyer which suggests that the lawyer is guilty of professional misconduct or conduct unbecoming, the complaint shall be dealt with as if it were a complaint against a Bencher, following the procedure as outlined above."

Carried

It was moved by Mr. Yachetti, seconded by Ms. Kiteley that the Recommendation on page 44 under the Swearing of Complaints be adopted.

Carried

It was moved by Mr. Yachetti, seconded by Ms. Kiteley that the Recommendation on page 44 under Ineligible Counsel be adopted.

Paragraph 2 at the top of page 45 was amended by deleting the words "his/her" and inserting the words "that Bencher's" so that the paragraph now reads "A Bencher shall not sit on any Discipline matter where counsel of record is a partner, associate or employee of that Bencher's law firm."

Paragraph 1 on page 44 under Ineligible Counsel was amended by deleting the word "not" so that the sentence now reads "The policy adopted by Convocation prohibiting lawyers from Bencher firms from appearing as counsel before discipline panels should be abandoned."

Ms. Kiteley withdrew her seconding of the motion and did not participate in the debate because members of her law firm might be affected.

Mr. Strosberg seconded Mr. Yachetti's motion which was adopted as amended.

The Special Committee on Discipline Procedures Report will now be referred to the Implementation Committee.

.....

NOTICE OF MOTION

Mr. McKinnon gave notice to Convocation that he intended to bring a motion to the November Convocation:

"that the right to sit on discipline panels be restored to life Benchers"

.....

LEGAL EDUCATION COMMITTEE

Mr. Epstein presented that portion of the Legal Education Committee Report dealing with the Articling Reform Sub-Committee: Proposals for Reform.

(A copy of the Report is in Convocation File)

It was moved by Mr. Epstein, seconded by Mr. Yachetti that the Sub-Committee's Report be adopted.

Carried

It was moved by Mr. Ruby, seconded by Mr. Bastedo that the Sub-Committee's Report on Articling Reform be referred back to the Committee to develop procedures which are not as onerous as those contemplated by the Report but still maintain the principle that there be some regulation of the articling experience.

Lost

Mr. Rock presented the balance of the Report of the Legal Education Committee of its meeting on October 11th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL EDUCATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of October, 1990. The following members were present: A. Rock (Chair), M. Cullity, D.H.L. Lamont (Vice-chairs), T. Bastedo, C. Campbell, S. Chapnik, P. Epstein, R. Ferguson, D. Hunt, L. Legge, P. Peters, M. Somerville, S. Thom, and J. Wardlaw. Dean Robert Sharpe of the University of Toronto Faculty of Law and Dean John Whyte of the Queen's University Faculty of Law were in attendance, representing the Committee of Ontario Law Deans.

A.
POLICY

1. ARTICLING REFORM SUB-COMMITTEE: PROPOSALS FOR REFORM

The Articling Reform Sub-Committee, chaired by Philip Epstein, after consultation with the judiciary, the Ontario government, the profession, the law schools, the Canadian Bar Association Ontario, and the Bar Admission Advisory Committee, has prepared its "Proposals for Articling Reform". The Report includes both comprehensive proposals for articling reform designed to enhance articling as an educational experience and a draft budget. The draft budget represents costs of administering the proposed reforms in excess of the current budgeted costs of administering the Bar Admission Course. The Report is attached. (Appendix I)

The Report was referred concurrently to the Finance and Administration Committee for its consideration and approval of the budget contained as an appendix to the Report.

It is recommended that the proposals contained in the Report be approved.

Approved

Note: Motion, see above

B.

ADMINISTRATION

1. CONTINUING LEGAL EDUCATION: COPYRIGHT OF PRINTED MATERIALS

The Chair of the Continuing Legal Education Reform Sub-Committee, Thomas Bastedo, has requested on behalf of the Subcommittee permission to retain a lawyer to provide a legal opinion on the ownership of the copyright in Continuing Legal Education published papers. The need to clarify copyright at this time is particularly important because of the significantly increased repeated use that will be made of published papers as a result of implementation of curriculum recommendations of the Subcommittee.

It is recommended that the Director of Continuing Legal Education, Brenda Duncan, be authorized to retain a lawyer on behalf of the Law Society of Upper Canada if in her opinion it is desirable to obtain copyright advice and to draft an appropriate form of copyright agreement to be executed by future authors.

2. JINYAN LI

Ms. Li requests an abridgment of the articling requirement to six months.

From 1984 to 1985 Ms. Li was a law student at University of International Business and Economics, in Beijing, China. She completed her legal studies in Beijing but left to commence LL.M. studies at Queen's University in Canada before completing her thesis requirement. Had she completed her thesis requirement, she would have been entitled to practise law in China. Ms. Li obtained her LL.M. from Queen's University in 1986, and in 1987 commenced D.Jur. studies at Osgoode Hall Law School. In the summer of 1987 Ms. Li commenced work at the Toronto office of Baker and McKenzie as a summer student. From April, 1988 to August, 1989 she worked on a full-time basis with Baker and McKenzie, and has continued to work with Baker and McKenzie on a part-time basis while attending the LL.B. program at University of Toronto law school since September of 1989. Ms. Li will complete her LL.B. requirements at the University of Toronto in May of 1990.

Ms. Li's extensive academic and employment experience in Tax and Corporate Law are detailed in the material which she has filed. (pages 1 - 7)

It is recommended that Ms. Li's articling requirement be reduced to six months, including two weeks of vacation.

Approved

C.

INFORMATION

1. QUEEN'S UNIVERSITY FACULTY OF LAW
COOPERATIVE LEGAL EDUCATION PROJECT

Dean John Whyte reported orally that the cooperative legal education project at Queen's University Faculty of Law will not be implemented effective September, 1991 as was originally planned. The proposed Project is under ongoing review. The Queen's University Faculty of Law Faculty Board will consider in September of 1991 whether to set a new implementation date.

2. CONTINUING LEGAL EDUCATION REFORM SUBCOMMITTEE

The Report is attached. (pages 8 -11)

3. COMPUTER EDUCATION FACILITY REPORT ON COURSES
FOR SEPTEMBER 1990

The Report is attached. (pages 12 - 13)

4. CONTINUING LEGAL EDUCATION REPORT ON COURSES

The Report is attached. (14 - 15)

5. CONTINUING LEGAL EDUCATION: PUBLICATIONS DEPARTMENT

The publications arm of the Continuing Legal Education Department has published and is now marketing its latest publication entitled "Trade Secrets". The 309 page book is an edited compilation of papers presented at a Continuing Legal Education conference held at Osgoode Hall on November 24, 1989. The book was produced under the direction of its editor, Roger T. Hughes, Q.C. of Toronto, and Norman MacInnes, Publications Editor for the Law Society of Upper Canada Continuing Legal Education Department.

ALL OF WHICH is respectfully submitted

DATED this 11th day of October, 1990

"A. Rock"
Chair

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

- B-Item 2 - Letter from Ms. Jinyan Li to Mr. Allan Rock dated September 7, 1990 together with resume and supporting letter from Schuyler Sigel. (Pages 1 - 7)
- C-Item 2 - Memorandum from The Legal Education CLE Reform Sub-Committee to the Legal Education Committee dated September 20, 1990 re: Interim Report No. 1, A. Distance Education, B. Copyright. (Pages 8 - 11)
- C-Item 3 - Monthly Report on Activities for September 1990. (Pages 12 - 13)
- C-Item 4 - Continuing Legal Education: Report on courses. (Pages 14 - 15)

THE REPORT WAS ADOPTED
.....

INSURANCE COMMITTEE

Mr. Furlong presented three Reports of the Insurance Committee of its meetings on October 10th and 11th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE INSURANCE COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 10th of October, 1990 at two o'clock in the afternoon, the following members being present: Messrs. Furlong (Chair), Howie, Epstein, Lamont, and Wardlaw.

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

ITEM

(a) Inter-Jurisdictional Practice - Professional Liability Insurance - Your Committee has been considering the feasibility of extending the professional liability insurance coverage available through The Law Society's Mandatory Errors and Omissions Program to apply to members' authorized practice of Canadian law outside of Ontario. Following lengthy discussion, your Committee recommends that such an extension be implemented to apply to any jurisdiction:

- (a) in Canada, without restriction, and
- (b) elsewhere in the world for incidental/occasional practice of Canadian law;

subject to suits brought in Canada.

The proposal before Convocation bears great similarity to and complements the submission by the Inter-Jurisdictional Practice Committee of The Federation of Law Societies with respect to the subject of Inter-Jurisdictional Practice. The report to the Federation, however, affords coverage to suits brought in North America while your Committee, as noted above, is of the view that coverage should be limited to suits brought in Canada. See Appendix "A".

ALL OF WHICH is respectfully submitted

DATED this 22nd day of October, 1990

"P. Furlong"
Chair

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

Item (a) - Memorandum to Mr. Patrick Furlong from Mr Lin Whitman dated October 16, 1990 re: The Inter-jurisdictional practice of law. (Appendix A, Pages 1 - 2)

THE REPORT WAS ADOPTED
.....

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA
IN CONVOCATION ASSEMBLED

THE INSURANCE COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 10th of October, 1990 at two o'clock in the afternoon, the following members being present: Messrs. Furlong (Chair), Howie, Epstein, Lamont, and Wardlaw.

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

ITEM

(a) Multiple Occurrences - The current Errors and Omissions policy wording provides coverage on an occurrence basis. Specific terminology in the policy addresses the question of multiple claims, and under what circumstances the multiple claims would be viewed as a single occurrence. There are circumstances under which multiple claims may not be viewed as a single occurrence the impact of which could adversely affect the stability of the mandatory insurance program. While ever

mindful of the need to balance the interests of the public and the economic viability of the Errors and Omissions Fund, your Committee recommends that the wording of the professional liability insurance policy be amended to provide for an annual aggregate limit of \$2,000,000.00 per member. The Director has been requested to prepare a draft of the required changes to the policy wording necessitated by an aggregate limit to be reviewed by your Committee at the next regularly scheduled meeting. See Appendix "A".

ALL OF WHICH is respectfully submitted

DATED this 12th day of October, 1990

"P. Furlong"
Chair

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

Item (a) - Memorandum from Mr. Lin Whitman dated September 6, 1990 re:
Multiple Acts - Multiple Occurrences - Limit of Liability.
(Appendix A, Pages 1 - 3)

THE REPORT WAS ADOPTED

.....

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 11th of October, 1990 at one-thirty in the afternoon, the following members being present: Messrs. Howie (Vice-Chair), Lamont, Noble, Wardlaw, Hickey, Lawrence, and Cass.

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

ITEM

1. INCORPORATION OF LAW PRACTICES

In his memo of September 25, 1990, and on behalf of the working group preparing the first draft of the regulations, Mr. Brockett asks if a law corporation will be required to pay the Errors and Omissions levy in addition to its members/shareholders. Your Committee is of the view that a law corporation should not be required to pay the professional liability insurance levy in the same manner as law partnerships are not obligated to pay a separate and distinct partnership Errors and Omissions levy. The Director has been requested to amend the wording of the professional liability insurance policy to include law corporations as a "named insured" to avoid any gaps in insurance coverage. See Appendix "A".

2. OUTSTANDING ITEMS

(a) Entitlement to Exemption from E & O Levy - Members occasionally take the position that the application for exemption portion of the levy form is inadequate. The result is a requirement to pay the E & O levy in circumstances where members feel an exemption is justified. Your Committee is of the view that a member be entitled to an exemption from coverage provided two conditions are met. Any member

not engaging in practice during the year in respect of which the levy is prescribed would be entitled to an exemption. In addition, counsel or solicitor to the Government of Ontario or of Canada, or to any corporation, a Crown Attorney, City Solicitor, or law teacher, would also be entitled to an exemption unless the member offers legal advice or services or otherwise engages in practice apart from such employment. See Appendix "B".

(b) Division of Responsibilities - Committee Members/Law Society Staff - Pursuant to Mr. Crosbie's memo of August 17, 1990 requesting all Benchers review the subject of Committee structure and management responsibilities, your Committee has discussed the operation of the Insurance Committee as it relates to the question of which responsibilities should rest with the Committee, and which responsibilities should be delegated to the Director and the Errors and Omissions Department. While the contents of the Director's memo of July 26, 1990 were generally accepted, your Committee, requested several amendments to reflect its views on the division of responsibilities. The Director was asked to prepare a revised memo for the Committee's consideration.

(c) Loss Prevention Booklet - Pursuant to your Committee's recommendation that the E & O Department proceed to create a current Loss Prevention Booklet, the Director advises that the steps necessary for its production are underway, and that there is no new additional information to report at this time.

(d) Research and Planning Committee - The Chair of this Committee corresponded with the Chairs of Standing and Special Committees requesting suggestions as to emerging policy issues that might be considered by the Research and Planning Committee. Due to time constraints, discussion of this subject has been postponed until the next regularly scheduled Committee meeting.

(e) Personal Undertakings - A question has been raised with respect to coverage under The Law Society's Professional Liability insurance program for claims arising out of lawyers' personal undertakings. The Director will report to the Committee during the next regularly scheduled Committee Meeting.

(f) Special Committee on the Complaints Process - Though this Committee accepted the recommendations made by the Special Committee, formal recommendation to Convocation for approval of these details was postponed pending further activity on the part of the Special Committee. The Director attended a meeting of the Special Committee on August 8, 1990, however, due to time constraints, further discussion of this subject has been postponed until the next regularly scheduled Committee Meeting.

(g) Changes to the Professional Liability Policy Wording - Your Committee established a Sub-Committee consisting of Mr. Epstein and Mr. Wardlaw to review the Director's proposals with respect to amending the policy wording of the Lawyer's Professional Liability insurance policy. The Director anticipates that the Sub-Committee's preliminary report will be tabled at the next regularly scheduled Committee Meeting.

(h) Excess Coverage for Non-Practicing Members - Pursuant to a question raised by Mr. Wardlaw, the Director has been advised by the Society's Brokers that should a member require a continuation of that member's excess insurance beyond the member's cessation of practice, several avenues are available to accommodate this need. Should excess coverage be required for an additional but limited period of time, a twelve month reporting extension can be added to the existing coverage. If excess coverage is required for a longer period of time, the policy

can be renewed annually or on a multi-term basis as required. Should members require additional information with respect to their individual needs, they should contact their brokers directly.

ALL OF WHICH is respectfully submitted

DATED this 12th day of October, 1990

"P. Furlong"
Chair

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

- Item 1 - Memorandums from Mr. Lin Whitman to Mr. Andrew Brockett dated September 28, 1990 re: Incorporation of Law Practices. Memorandum from Mr. Andrew Brockett to Mr. Lin Whitman dated September 25, 1990 re: Incorporation of Law Practices.
(Appendix A, 1 - 4)
- Item 2 - Memorandum with enclosures from Mr. G. Kevin O'Toole to Mr. Lin Whitman dated August 31, 1990 re: Members' Entitlement to Exemption from E & O Levy. (Appendix B, Pages 1 - 4)

THE REPORT WAS ADOPTED

.....

COMPENSATION FUND COMMITTEE

Mr. Ruby presented the Report of the Compensation Fund Committee of its meeting on October 11th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMPENSATION FUND COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of October, 1990 at 11:45 a.m. the following members being present: C. Ruby (Chair), G.H.T. Farquharson (Vice-Chair), Ms. Callwood, T. Carey, S. Lerner, B. Noble, and S. Thom;

P. Bell and Mrs. H.A. Werry also attended.

A. POLICY

1. BENEFICIARIES OF ESTATES

The Secretary reported that the Sub-Committee on the Compensation Fund General Guidelines met on February 20th, 1990 and discussed amending the Guidelines to allow beneficiaries of estates to make claims to the Fund on their own account instead of through the personal representative. The Sub-Committee was of the opinion that it would be more equitable to permit all beneficiaries to make a claim and have the benefit of the per claimant limit rather than the estate being the claimant and having only one per claimant limit. There was also a discussion of a limit of \$250,000 per estate for grants paid out of the Fund to all beneficiaries of estates until such time as the Society can determine what the effect will be on the Fund.

On September 7th, 1990 Convocation considered the Report and the recommendation of the Compensation Fund Committee that the Guidelines should be amended to allow beneficiaries of estates to make claims on their own account in lieu of the personal representative and that claims by a personal representative for the benefit of creditors should not be accepted, and referred the matter back to the Committee for further consideration.

Some Benchers thought that there should be a limit to the amount that all beneficiaries of an estate could claim. The Committee felt this concern was answered because the making of grants is discretionary under Section 51(5) of the Law Society Act.

The view was expressed that creditors of an estate should be able to make a claim to the Fund. The Committee felt that creditors should not be able to make a claim because usually there is no solicitor and client relationship between the creditor and the solicitor.

RECOMMENDATION: Your Committee recommends that without changing any of the existing Guidelines for the Fund, that beneficiaries of estates be allowed to make claims on their own account. In the case of a loss sustained by the estate of a deceased person, the maximum amount to be awarded shall be an amount not to exceed the total of \$100,000 for each beneficiary of the estate who would suffer a loss of \$100,000 or more, and the amount of the loss that would be sustained by each beneficiary who would suffer a loss of less than \$100,000. The grant(s) may be paid directly to the beneficiaries, in the discretion of the Society, in such amounts not to exceed \$100,000, for each beneficiary, as the Society determines is fair in the circumstances.

Your Committee also recommends that the wording of the policy stated above be referred to the Legislation and Rules Committee as to drafting.

B.

ADMINISTRATION

1. ROGER MORRIS COMPENSATION FUND REQUEST
FOR THE SOCIETY TO WAIVE ITS RIGHT TO SUBROGATION

The Secretary reported that a letter was received from counsel for Mr. Morris requesting that the Society waive its right, under the Law Society Act, to be subrogated in respect of a payment of \$50,000 that Mr. Morris will raise from friends. Two claimants who will receive \$25,000 each from that payment have already received grants of \$50,000 each from the Compensation Fund. Mr. Morris is being prosecuted on a charge of a criminal breach of trust. If the Society agreed to the request, Roger Morris would assign to the Law Society the first \$100,000 that he is entitled to receive from the estate of his late father. Mr. Charles Mark, Mr. Morris' counsel, attended before the Committee and made submissions.

RECOMMENDATION: Your Committee recommends that the Society should refuse the request to waive its subrogation rights because the Society would be in breach of section 51(7) and (8) of the Law Society Act.

2. INSURANCE FOR THE COMPENSATION FUND

The Secretary reported that a quotation was received from Marsh and McLennan Ltd. for insuring the Compensation Fund. The proposal was subject to a sub-limit of \$1,000,000 per sole practitioner or law firm. The Committee considered and discussed the quotation and whether insurance is needed for the Compensation Fund. The Committee felt the quotation of \$125,000 for insurance of \$5 million over and above the Society's retention of \$2.3 million would not be significant at this time because the amount in the Fund is \$30 million and the largest amount of grants paid out in a fiscal year was \$3.1 million in 1982/83.

RECOMMENDATION: Your Committee recommends that the quotation to insure the Compensation Fund not be accepted.

3. QUOTATION FROM ACTUARIES ON UP-DATING
THEIR REPORT OF FEBRUARY 16TH, 1990

The Secretary reported that a quotation of \$5,500 was received to up-date the Tillinghast report of February 16th, 1990, for an estimate of future grant payments from the Fund between July 1st, 1990 and June 30th, 1991, if a recession occurs. The Secretary reported that the previous Report of February 16th, 1990, did not include a factor for a recession. That Report was based on statistics supplied to Tillinghast for the period from 1975 to November 30th, 1989.

RECOMMENDATION: Your Committee recommends that the Director of Finance of the Law Society be asked for a report as to the implications for the Compensation Fund as to the amount that will be paid out in grants if the recession lasts longer and strikes deeper than the recession in 1982, and that the letter from Marsh and McLennan of September 19th, 1990, referring to the anticipated payment of grants from the Fund in the event of a recession, and the graph, prepared by the staff, showing the claims made against the Fund in 1976-1990, be reviewed and considered by the Director of Finance when preparing the report. Your Committee recommends that no action be taken on the retaining of Tillinghast at this time.

C.
INFORMATION

1. REFEREE'S REPORT

The Secretary reported that the following Referee's Report was approved by the Review Sub-Committee and is for information purposes only:-

B.W. Grossberg, Q.C. - Albin Rogala - 26 claims
- (Disbarred by Convocation on February 22nd, 1989)

2. A. ROGALA CLAIMANTS' APPEAL HEARD BY APPEAL DIVISION

The Secretary reported that the appeal of two claimants who filed a joint claim to the Fund, was allowed on August 30th, 1990, and each claimant was awarded a grant of \$44,000. The Referee had treated the joint claim as one claim and awarded the maximum per claimant limit of \$60,000 to the claimants jointly.

3. FRENCH TRANSLATION OF COMPENSATION FUND DOCUMENTS

The Secretary reported that four of the five documents sent to claimants have now been translated. The claim form will be translated in the next two months.

4. The total amount of accounts approved by Assistant Secretaries for the month of September, 1990 was \$429.27.

5. The Financial Summary, and the Activity Report for the month of September, 1990, are attached. (Pgs. C1-C3)

6. COMPENSATION FUND DIAL-A-LAW TAPE #60

The Secretary reported that the dial-a-law tape on the Compensation Fund has been up-dated to include the new per claimant limit of \$100,000 for funds advanced to a lawyer on or after May 25th, 1990.

ALL OF WHICH is respectfully submitted

DATED the 26th day of October, 1990

"C. Ruby"
Chair

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

C-Item 5 - The Law Society of Upper Canada, Financial Summary for the period July 1, 1990 to September 30, 1990.

(Marked C1 - C3)

It was moved by Mr. Cass, seconded by Ms. Weaver that the item dealing with Beneficiaries of Estates, be deleted.

Lost

THE REPORT WAS ADOPTED

.....

FINANCE AND ADMINISTRATION COMMITTEE

Mr. Ground presented the Report of the Finance and Administration Committee of its meeting on October 11th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of October 1990 at three o'clock in the afternoon, the following members being present: Messrs. Howie (Chair), Guthrie (Vice Chair), Lamont, Lerner, Pepper, Topp, Wardlaw and Mrs. Weaver.

C.
POLICY

1. COUNSEL FEES

At the June 14, 1990 meeting of the Finance Committee, some concerns were expressed about the adequacy of accounts received from counsel retained by the Law Society. In particular, some accounts were being submitted for payment which did not give a breakdown of the hours worked by various persons involved on the file nor rates at which fees were being charged. The issue of maximum rates that the Law Society should be paying was also raised.

The Under Treasurer was asked to review with staff the current practices and to report back to the Finance Committee. The attached report was submitted for the Committee's consideration.

The Committee recommended that a Sub-Committee of the Finance and Administration Committee be established comprised of members who represented other committees where counsel fees are a significant budget item. That sub-committee would set policy guidelines to be applied by staff and establish a process to review all accounts in excess of those guidelines.

2. BUILDING FINANCING

A memorandum from the Director concerning the progress in negotiating financing for the building addition was before the Committee.

The Committee recommended that the Director of Finance continue negotiations and arrange financing in due course as was authorized by Convocation in June 1990.

B.
ADMINISTRATION

1. FINANCIAL REPORT

The Director's highlights memorandum for the three Law Society Funds together with supporting financial statements for the three months ended September 30th 1990 was before the meeting.

Approved

2. CANADIAN LEGAL INFORMATION CENTRE

The Secretariat budget approved in May 1990 includes an item for support of Canadian Legal Information Council in the amount of \$50,000.00. Claudette Racette of C.L.I.C. has enquired as to the processing of that payment.

The Committee was asked to approve the payment of this grant in two instalments, \$25,000 now and \$25,000 in January 1991. (The previous year's grant of \$45,000 was paid in two instalments also).

Approved

3. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 3 members who have not complied with the requirements respecting annual filing and who have not paid the late filing fee.

In all 3 cases all or part of the late filing fee has been outstanding four months or more. The 3 members owe \$1,240.00 of which \$400.00 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 3 members be suspended on October 26th 1990 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 103

4. 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:

John Andrew Black	Kingston
Joan Clare Seeley Butler	Toronto
Frederick William Cash	Welland
James Edward Casey	Toronto
James Ker Dundas	Welland
Eugene Charlton Gerhart	Parry Sound
David Ross Grant	Toronto
Michael Karpluk King	Lincoln
Lloyd Arthur May	Toronto
John Vernor Mills	Etobicoke
George Perley-Robertson	Ottawa
Fred Stasiuk	Etobicoke

Approved

(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:

William Richard Reed St. Catharines

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

Approved

5. RESIGNATION - REGULATION 12

The following member has applied for permission to resign her membership in the Society and has submitted a Declaration in support. The member has requested that she be relieved of publication in the Ontario Reports. She feels that resignation is her own business and any advertisement for permission to resign would taint the circumstances.

Brenda Jane McCourt Vancouver, British Columbia

Her Declaration is in order and the Committee was asked to approve it.

The Committee approved her resignation on the condition that she first publish her resignation in the Ontario Reports.

6. LIFE MEMBERS

(a) Pursuant to Rule 49, the following member is eligible to become a Life Member of the Society with an effective date of 17th October 1990:

James Carman Dunlop Toronto

Noted

(b) Francis Joseph Jordan was called to the Bar on the 16th of September 1937. In normal circumstances, he would have been eligible for life membership in 1987. Mr. Jordan's rights and privileges were suspended on the 31st of May 1972 for his failure to comply with the insurance plan. He has not paid annual fees all these years, refusing to pay the amount assessed each year, insisting that \$10 a year should suffice to maintain standing, as it did in the old days. Mr. Jordan has no intention of being reinstated. He takes issue about not having been given a Certificate of Life Membership and by letter dated 4th September 1990, he urges that one be sent to him without delay.

Pursuant to Rule 49(1), the Society grants life membership to its members who have been entitled to practise for fifty consecutive years or longer. Subsection 2 of that rule states that where membership has been interrupted by a period of suspension for failure to pay a fee or levy, such period may in the discretion of the Finance Committee be counted in determining eligibility for life membership.

The Committee was asked to consider this request.

Denied

C.
INFORMATION

1. ROLLS AND RECORDS

(a) Deaths

The following members have died:

William Russell Anderson Arnprior	Called June 21st 1951 Died October 25th 1989
Michael Ernest Fram Kingston	Called June 29th 1949 Died November 9th 1989
Robert McLeod Snelgrove Mississauga	Called June 21st 1951 Died March 10th 1990
Eric Joseph Brown Don Mills	Called June 25th 1953 Died April 7th 1990
John Williamson Hamilton Willowdale	Called June 17th 1937 Died April 17th 1990
Richard George Meech Toronto	Called May 18th 1922 Died June 24th 1990
Rudolf Robert Henauer Rexdale	Called April 15th 1966 Died June 27th 1990
George Thomas Spence Lyons Toronto	Called September 16th 1954 Died August 2nd 1990
Anthony Paul Kafun Scarborough	Called March 22nd 1974 Died August 21st 1990
Hugh Norman Macritchie Scarborough	Called June 24th 1954 Died September 1st 1990
John Edwin Clement Waterloo	Called September 15th 1932 Died September 12th 1990

Noted

(b) Membership in Abeyance

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

John Rhys Morgan Toronto	Called March 24th 1972 Appointed to the Ontario Court, Provincial Division August 15th 1990
-----------------------------	--

Brent Sheldon Knazan
Toronto

Called March 29th 1977
Appointed to the Ontario Court,
Provincial Division
August 15th 1990

Eric Samuel Lindsay
Scarborough

Called March 26th 1965
Appointed to the Ontario Court,
Provincial Division
September 1st 1990

Alfred James Lloyd Chapman
Oakville

Called June 23rd 1955
Appointed to the Ontario Municipal
Board
September 4th 1990

Harry Hamilton Lancaster
St. Catharines

Called June 26th 1958
Appointed to the Ontario Municipal
Board
September 4th 1990

John Albert Wheler
Toronto

Called September 19th 1958
Appointed to the Ontario Municipal
Board
September 4th 1990

Terence Frederick Baines
Courtice

Called April 8th 1960
Appointed to the Ontario Municipal
Board
September 4th 1990

Stanley Robert Cole
Toronto

Called April 10th 1964
Appointed to the Ontario Municipal
Board
September 4th 1990

Morley Abraham Rosenberg
Don Mills

Called March 26th 1965
Appointed to the Ontario Municipal
Board
September 4th 1990

Peter Haughland Howden
Barrie

Called March 17th 1967
Appointed to the Ontario Municipal
Board
September 4th 1990

Gordon Ian Thomson
Toronto

Called March 21st 1969
Appointed to the Ontario Municipal
Board
September 4th 1990

Robert Derwyn Myles Owen
Toronto

Called March 19th 1970
Appointed to the Ontario Municipal
Board
September 4th 1990

John Russell Tomlinson
Toronto

Called March 19th 1970
Appointed to the Ontario Municipal
Board
September 4th 1990

Shing-Kan Wilson Lee
Toronto

Called March 29th 1977
Appointed to the Ontario Municipal
Board
September 4th 1990

Ted Yao
Toronto

Called April 14th 1978
Appointed to the Ontario Municipal
Board
September 4th 1990

Jean Anna Fraser
Toronto

Called April 6th 1982
Appointed to the Ontario Municipal
Board
September 4th 1990

Noted

(c) Disbarments

The following members have been disbarred and struck off the rolls and their names have been removed from the rolls and records of the Society:

Kevin John Mahan
Hamilton

Called March 29th 1977
Disbarred - Convocation
March 30th 1990

Thomas Tedd Sahaidak
Toronto

Called June 25th 1959
Disbarred - Convocation
September 27th 1990

Frank Seth Cook
Toronto

Called March 23rd 1973
Disbarred - Convocation
September 27th 1990

David Carson Bird
Little Current

Called April 10th 1980
Disbarred - Convocation
September 27th 1990

Robert Earl Stafford
St. Thomas

Called April 11th 1983
Disbarred - Convocation
September 27th 1990

Noted

2. CHANGES OF NAME

(a) Members

<u>From</u>	<u>To</u>
David Edward Fuchs	David Edward <u>Fox</u> (Court Order)
Katherine Ann Auvinen	Katherine Ann <u>Cotton</u> (Married Name)
Nancy Lynn Lamont	Nancy Lynn <u>Godwin</u> (Maiden Name)
Roger Allan Reive	Roger <u>Guy</u> Reive (Court Order)
Stephanie Marie Wozasek	Stephanie Marie Wozasek <u>Traynor</u> (Married Name)
Jo-Ann Patricia Patterson	Jo-Ann Patricia <u>Willson</u> (Maiden Name)

(b) Student Members

<u>From</u>	<u>To</u>
Irene Comber	Irene <u>Linklater</u> (Married Name)

Noted

3. LEGAL MEETINGS AND ENTERTAINMENT

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

October 31st 1990	Medico-Legal Dinner Convocation Hall
November 8th 1990	Lawyers Club Convocation Hall
November 21st 1990	Medico-Legal Dinner Convocation Hall
November 29th 1990	Criminal Law Association Small Dining Room
December 7th 1990	Women's Law Association Convocation Hall
December 13th 1990	Lawyers' Club Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 26th day of October 1990

"J. Ground"
Chair

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

- A-Item 1 - Memorandum from Mr. Donald A. Crosbie to the Finance Committee dated August 23, 1990 re: Counsel Fees.
(Marked A1, pages 1 - 2)
- A-Item 2 - Memorandum from Mr. David E. Crack to the Chair and Members of Finance and Administration Committee dated October 11, 1990 re: Building Financing. (Marked A2, Pages 1 - 2)
- B-Item 1 - Memorandum from Mr. David E. Crack to the Chair and Members of the Finance and Administration Committee dated October 11, 1990 re: Financial Statement Highlights - September 30, 1990. (Marked B1, Pages 1 - 7)

THE REPORT WAS ADOPTED

.....

The Treasurer then introduced Premier Robert Rae to Convocation.

.....

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:45 P.M.

.....

The Treasurer and Benchers had as their guests for luncheon, Premier Robert Rae, Mr. Garth Manning, President of the Canadian Bar Association-Ontario and Ms. Nancy Mossip, Chair of the County and District Law Presidents Association.

.....

CONVOCATION RECONVENED AT 2:30 P.M.

.....

PRESENT:

The Treasurer, (James M. Spence, Q.C.), Bastedo, Bellamy, Bragagnolo, Callwood, Campbell, Carey, Carter, Cass, Chapnik, Ferguson, Ferrier, Furlong, Ground, Guthrie, Hall, Kiteley, Lamek, Lamont, Lawrence, Lerner, McKinnon, Murphy, O'Connor, Peters, Rock, Shaffer, Somerville, Strosberg, Thom, Topp, Wardlaw, Weaver, and Yachetti.

.....

COMMUNICATIONS COMMITTEE

Mr. McKinnon presented the Report of the Communications Committee of its meeting on October 11th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of October, 1990, the following members were present: Mr. McKinnon (Chair), Ms. Callwood and Kiteley, Messrs. Bastedo, Manes, Shaffer, Thom and Yachetti. Also in attendance were Messrs. Daniher, Tinsley, Windsor and Ms. Angevine, and Ms. Starkes and Ms. Zecchini.

B.

ADMINISTRATION

1. COMMUNICATIONS SESSION

The Committee approved a proposal for a day long session in which Benchers and key staff members would review the public opinion and communication environments. A sub-committee was struck to organize the session to be held on Saturday, December 1st, 1990.

2. MPP CONTACT

The Committee reviewed the contacts already initiated with members of the new provincial Cabinet. The Committee directed that an appropriate information package on the Society be forwarded to MPPs at the earliest possible opportunity.

3. FRENCH LANGUAGE SERVICES

The Committee reviewed a request to provide funding for the development and placement of advertisements in francophone newspapers outlining the French language services available through the Law Society. The Committee authorized the expenditure of \$8,000 in this regard.

C.

INFORMATION

1. DIRECTOR OF COMMUNICATIONS

The Committee was introduced to Gemma Zecchini who has accepted an offer to become the Director of the Department. Ms. Zecchini will begin her duties on November 5th, 1990. A copy of Ms. Zecchini's Curriculum Vitae is attached.

2. LAW SOCIETY BOOKLET

The Committee was advised that revisions submitted since the last meeting have been incorporated into a final draft. The text will now be sent for production.

3. CALL USAGE STATISTICS

The Dial-A-Law numbers declined in September, reflecting the fact that the spring/summer advertising program concluded at the end of August. As a result of the decline in the Dial-A-Law numbers, a similar decline was noted for the Lawyer Referral Service. The autumn Dial-A-Law advertising program commenced during the week of October 2nd, 1990.

ALL OF WHICH is respectfully submitted

DATED this 26th day of October, 1990

"C. McKinnon"
Chair

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

C-Item 1 - Copy of Ms. Gemma Zecchini's Curriculum Vitae. (Pages 1 - 2)

C-Item 3 - Call Usage Statistics for Dial-a-Law and the Lawyer Referral Service to September 30, 1990. (Marked A-1)

THE REPORT WAS ADOPTED

.....

SPECIAL COMMITTEE ON BENCHER ELECTIONS

Mr. Ferguson presented the Report on the Special Committee on Bencher Elections.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA
IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON BENCHER ELECTIONS begs leave to report:

INTRODUCTION

In October, 1989, Convocation adopted a report from the Research and Planning Committee in which it was recommended that a special committee be appointed "to review various issues concerning the election of benchers". At its meeting on November 24, 1989, Convocation established the Special Committee on Bencher Elections and appointed the following benchers to serve as members:

Roderic G. Ferguson (Chair), Denise Bellamy, Philip Epstein, Frances Kiteley, Ian W. Outerbridge, Patricia J. Peters, James M. Spence, J. Douglas Thoman and Robert C. Topp. Colin D. McKinnon was subsequently appointed to the Committee. The following members of staff were invited to participate in the Committee's activities: Andrew Brockett (Research Director), Christine Iannetta (who acted as Secretary to the Committee), Roy Schaeffer (Manager of Bencher Elections) and Richard Tinsley (Secretary).

The Committee set out to provide for the involvement of members in its work. In April, 1990 a three page questionnaire (Appendix #1) was mailed to all 21,450 members in good standing soliciting responses to a number of questions relevant to the concerns of the Committee. In addition, advertisements were placed in Ontario Reports and The Lawyers Weekly. The Committee is pleased to report that 316 submissions were received. A statistical analysis of the responses can be found at Appendix #2.

The Committee has already expressed its gratitude to those who sent written comments. It would now like to record its thanks to the following individuals who made representations in person: Colin L. Campbell, Laura Legge, Ronald Manes, Barry Pepper and Stephen Traviss. The Committee also wishes to thank Derek Hayes and Peter Jones who appeared on behalf of the Canadian Corporate Counsel Association, and Shelley Birenbaum, Suzanne Duncan and Joachim Sparkahl who appeared on behalf of the Committee for Benchers Accountability.

The Committee for Benchers Accountability presented a "Submission on Benchers Election Reform" containing a series of detailed recommendations. Your Committee gave careful attention to this submission and wishes to express its appreciation for the work which underlies it. The submission, together with its supporting data, is to be found at Appendix #3.

Finally, your Committee wishes to record its gratitude to the County and District Law Presidents Association. At the meeting of the County and District Law Presidents on May 11, 1990, the topic of reform to the benchers election process was thoroughly canvassed and debated at length. Subsequently, the Association submitted a brief to the Committee, recommending that a system of regional representation be introduced. Your Committee recognizes the significant amount of time that has been given to this matter by the County and District Presidents and wishes to place on record its appreciation of the Association's thoughtful recommendations. The brief from the County and District Law Presidents Association is to be found at Appendix #4.

RECOMMENDATIONS OF THE SPECIAL COMMITTEE
ON BENCHER ELECTIONS

REGIONAL REPRESENTATION

The Special Committee on Benchers Elections (1989) is a successor to the Special Committee on the Election of Benchers which reported to Convocation in May of 1985. The mandate of that Committee was to consider the feasibility of implementing a system of regional representation. Many of the arguments in regard to regional representation, with restrictions on voting, resurfaced in the discussions of the 1989/1990 Committee.

It is interesting to note that the Special Committee which reported in 1985 was unable to reach a consensus on the issue of regional representation. In its report, the 1985 Committee laid out the arguments for and against regional representation and placed a number of different solutions before Convocation. The matter was taken no further. Regional representation appears first to have been discussed in 1870. The fact that it has since been considered on a number of occasions but never implemented may be an indication of its complexity.

72% of the respondents to the questionnaire favoured regional representation. Among the organizations which responded, L'Association des juristes d'expression française de l'Ontario, the County and District Law Presidents Association, the County of York Law Association and Legal Assistance Kent, each expressed positive support for the concept.

Though some respondents expressed concerns about the suitability of basing the system upon the regions set out in the Courts of Justice Act, a significant number believed that some form of regional representation would lead to improved voter turnout and more effective representation in Convocation. The members of the Committee took seriously the view, repeatedly expressed in the submissions received, that members were apathetic toward benchers' elections because they felt no connection with the benchers. The problem has manifested itself in declining voter turnout (71.2% in 1979, 62.5% in 1983 and 54.1% in 1987) and your Committee gave much consideration to means of reversing this disturbing trend.

One of the most persuasive arguments raised against regional representation was that it challenges the tenet that a bencher is elected to govern the profession in the public interest as a representative of all members, not merely as a representative of members in a particular area. It was also noted that a system of regional representation might work against those candidates for election who do not have a distinct regional base.

Your Committee carefully considered these concerns. After much debate, it was decided to recommend a system under which some benchers will be elected by voters within regions and others will be elected by all voters in the province. As will be seen later in this report, your Committee decided not to recommend an increase in the number of elected benchers: their number should remain at forty. Likewise, your Committee is of the view that twenty benchers should continue to be elected from outside Metropolitan Toronto and twenty from within Metropolitan Toronto.

Your Committee has proceeded on the assumption that the changes which it recommends are matters which fall within the rule-making power of Convocation under s. 62(1) of the Law Society Act. If this is true, it will be possible for Convocation to implement the changes in time for the 1991 election of benchers. A legal opinion upon the powers of Convocation in this respect has been sought and it is anticipated that the opinion will be available by the time Convocation considers this report.

Regions

Your Committee recommends that:

The seven regions outside the Municipality of Metropolitan Toronto prescribed under s. 92a of the Courts of Justice Act, 1984, S.O. 1984, c. 11, as amended, be established as electoral regions.

It was one of the recommendations of the County and District Law Presidents Association that the regions established under the Courts of Justice Act (i.e. the Court Reform Regions) should be adopted. The seven regions outside Toronto, with their approximate numbers of voters, are:

North West	(230)
North East	(486)
East	(2,805)
Central East	(844)
Central West	(896)
Central South	(1,771)
South West	(1,559)

Your Committee also considered a proposal that Metropolitan Toronto should be sub-divided into electoral regions. All twenty benchers currently from Metropolitan Toronto practise within the City of Toronto. Lawyers from other parts of the metropolitan area have argued that their practices are markedly different from the practices of the benchers who have traditionally been elected from Metropolitan Toronto. They argued that they ought to be represented on Convocation but that under the current system it is unlikely that any of their number will be elected. Whether or not these arguments are accepted by Convocation,

the fact remains that they are indicative of views that are held by members who practise within Metropolitan Toronto but outside the downtown core. If the principle of regional representation is adopted for areas outside Metropolitan Toronto, a convincing argument can be made that the same principle should apply within Metropolitan Toronto. Accordingly, your Committee recommends that:

The following four electoral regions should be established within the Municipality of Metropolitan Toronto: (1) The City of Toronto. (2) The Borough of East York and The City of Scarborough. (3) The City of York and The City of Etobicoke. (4) The City of North York.

The approximate number of voters within these four divisions is as follows:

City of Toronto	(10,039)
Borough of East York and City of Scarborough	(265)
City of York and City of Etobicoke	(260)
City of North York	(906)

Number of Representatives Per Region

The County and District Law Presidents Association recommended that each region should have two benchers, with an additional bencher for every 750 lawyers over the first 750. At current membership numbers, this formula would give a minimum of two benchers for any region (for example, the North West Region) and a maximum, outside Metropolitan Toronto, of five benchers per region (for example, the East Region). The County and District Law Presidents also recommended that five members be elected at large from any part of the province. Their scheme would have required an increase in the total number of elected benchers to forty-five. Your Committee does not support such an extensive measure of regionalization. Without denying the validity of the arguments in favour of regional representation, it is essential also to preserve the principle that benchers are elected as representatives of all members in the province. Accordingly, your Committee recommends that:

There should be one bencher elected from each of the eleven electoral regions. The remaining thirteen benchers from outside Metropolitan Toronto and the remaining sixteen benchers from within Metropolitan Toronto should be elected by all voters in the province, as at present.

Your Committee acknowledges that the regional election of eleven of forty benchers falls considerably short of the more comprehensive scheme of regional representation proposed by the County and District Law Presidents Association. It was clear however that the majority of the Committee were convinced that this was not the time to recommend such an extensive change. It will be recalled that the 1985 Special Committee was unable to reach consensus. Your Committee has worked hard to formulate a definite proposal. The recommendation that one bencher be elected from each region is a compromise: nevertheless your Committee considers it to be the only measure of regional representation likely to gain the approval of Convocation at this time. If the proposal is adopted, it may be that, following the 1991 election of benchers, Convocation will wish to reconsider the number of benchers elected from each region.

Method of Voting

There are at least two different methods of voting which might reasonably be considered consistent with a scheme of regional representation. Both were included in the report of the 1985 Special Committee on the Election of Benchers.

Under the first method, although there would be regional representatives, they would be elected by all voters in the province. To give effect to this scheme, the candidate from each region receiving the greatest number of votes overall would be elected as regional representative, even though that candidate may have fewer votes than some candidates from other regions who fail to be elected.

The second method might be more accurately described as a constituency scheme. Regional representatives would be elected only by the votes of voters in their own regions. The County and District Law Presidents Association advocated a scheme of this nature. Your Committee has come to the conclusion that this will be the most effective way of ensuring that the objectives of regional representation are achieved. Accordingly, your Committee recommends that:

The benchers who are elected as regional representatives be elected only by the votes of voters within their own regions.

The remaining benchers, thirteen from outside Metropolitan Toronto and sixteen from within Metropolitan Toronto, should continue to be elected by a constituency comprising all voters in the province.

Mechanics of the Scheme Proposed

The scheme recommended by your Committee is, perhaps, most easily explained by outlining a set of draft procedures for the election.

1. Every ballot shall have an identical text, listing the names of all candidates running in the province. The ballot shall be in two parts, the first part listing names of candidates from outside the Municipality of Metropolitan Toronto, the second part listing the names of those candidates from within the Municipality of Metropolitan Toronto. The electoral region of each candidate shall be specified, in brackets, immediately following the name of the candidate.
2. (a) Voters in the North West electoral region shall be sent ballots on green paper.

(b) Voters in the North East electoral region shall be sent ballots on red paper.
[And so on for each of the other 9 electoral regions, a different colour for each one.]
3. Every person entitled to vote at an election of benchers may vote for any number of candidates but not for more than forty in all, twenty from within Metropolitan Toronto and twenty from outside Metropolitan Toronto as provided in section 15 of the Law Society Act. [This is the current wording of subrule 12(3).]
4. When counting the votes, ballots shall first be grouped by separate colours. The candidate from each electoral region receiving the greatest number of votes from voters within that electoral region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher and that candidate's name shall be excluded from any further counting of the ballots.
5. (a) All ballots of every colour, shall than be collected together and counted.

(b) The remaining thirteen candidates from outside Metropolitan Toronto who have the greatest number of votes as reported by the scrutineers shall be certified forthwith by the Secretary as having been elected as benchers.

(c) The remaining sixteen candidates from within the Municipality of Metropolitan Toronto who have the greatest number of votes as reported by the scrutineers shall be certified forthwith by the Secretary as having been elected as benchers.

It will be noted that under this scheme there is nothing that requires a voter to use any of her forty votes in voting for a candidate or candidates from her own electoral region. She may, if she wishes, cast all forty of her votes for candidates from outside her electoral district. At the same time, it should be recognized that since ten benchers are to be elected from regions other than the voter's own region, her forty votes can be effective in electing no more than thirty benchers.

METHOD OF FILLING VACANCIES

The method of filling vacancies among the benchers is prescribed by s.21 of the Law Society Act:

21.(1) Where there is a failure to elect the requisite number of qualified benchers, the remaining benchers shall as soon as convenient supply the deficiency by electing in Convocation the requisite number of qualified members as benchers.

21.(2) Where there is a vacancy in the requisite number of benchers, the remaining benchers shall as soon as convenient fill the vacancy by electing in Convocation a qualified member as a bencher to fill the vacancy, but where at the last quadrennial election of benchers there were more qualified candidates than benchers to be elected, the remaining benchers shall as soon as convenient fill the vacancy by electing in Convocation as a bencher the qualified member who among the defeated candidates at such election received the greatest number of votes.

21.(3) The benchers elected under this section shall, subject to this Act, hold office until their successors take office.

81% of the respondents to the survey were satisfied with the current method of filling vacancies.

Nevertheless, if Convocation adopts the proposal for regional representation, the Rules under s. 62(1) of the Law Society Act will need to make clear that where a regional representative ceases to be a member of Convocation the vacancy is to be filled by a person from the same region. Your Committee has sought a legal opinion as to whether Convocation has power under s. 62(1) to make a rule with this effect. It is anticipated that the opinion will have been received by the time this report is considered by Convocation. In the meantime, your Committee proceeds on the assumption that Convocation has the necessary power. Accordingly, your Committee recommends that:

Convocation should make a rule providing that, for purposes of s. 21 of the Law Society Act, where there is a failure to elect the requisite number of benchers from a particular electoral region or where there is a vacancy in the requisite number of benchers from a particular electoral region, the term "qualified member" shall mean a member whose address on the records of the Society on the last day for nominations for the last quadrennial election of benchers was within that particular region.

Two comments should be made. First, the "requisite number of benchers" from any region is, under the proposals in this report, one. The language of the recommended rule change, however, conforms with the wording of s. 21 of the Act and will serve if, at any time, the number of regional representatives for any region is increased.

Second, the proposal is not perfectly consistent with the scheme of regional representation recommended in this report. At an election, regional representatives are to be elected only by the votes of voters in that region. Under the rule now proposed, the person who fills a regional vacancy will be a person from the region but one who becomes a bencher on the strength of all the votes cast for her, province-wide, at the last election. In other words, a person elected to fill a regional vacancy will be a person elected at large, albeit from the region.

The Act requires that a vacancy be filled by "the qualified member who among the defeated candidates at [the last quadrennial] election received the greatest number of votes". Subject to the opinion to be received from Counsel, your Committee assumes that Convocation has power to define a "qualified member" as a member coming from the region in question. Your Committee does not believe that Convocation has power to make a rule which provides that the words "the qualified member who among the defeated candidates at [the last quadrennial] election received the greatest number of votes" shall mean "the candidate from the region in question who received the greatest number of votes cast by voters in that region at the last quadrennial election".

SECTORAL REPRESENTATION

Your Committee considered the case for electing benchers to represent different sectors of the profession. It was suggested that benchers might be elected to represent the following groups:

- Junior Members of the Bar
- Women
- Men
- Identifiable Minorities
- Students
- Members Within Particular Fields of Practice

Your Committee concluded that:

A scheme of sectoral representation, providing for the election of benchers to represent members on the basis of length of time at the bar, sex, minority status, student status or field of practice, should not be adopted.

Those respondents who favoured representation on the basis of age, or year of call to the bar, were particularly concerned at the lack of benchers from the junior bar. While recognizing this fact, your Committee is of the opinion that it would be undesirable to introduce an entrenched representation for any sector of the profession. It has been argued that it is not necessary to be a member of a particular group in order to represent the interests of that group. The analogy with parliamentary representation was noted.

Your Committee was fortified in its conclusion by the fact that the majority of respondents to the questionnaire were opposed to sectoral representation on each of the bases suggested. The percentages of respondents opposed to representation of the different sectors were as follows: age (63%), sex (74%), minority status (80%), student status (71%), field of practice (65%). Many respondents were of the view that while the Society should encourage the involvement of special interest groups, it should not require that they become involved through a scheme of formal representation.

It was further suggested that sectoral representation might entrench and perpetuate divisions within the profession, pitting one group against another.

A significant number of respondents commented that representation by category would amount to reverse discrimination. Others remarked that the allocation of seats on the basis of sex would be offensive in wake of the Society's attempt to avoid sexism in communication. In any case, as increasing numbers of women become senior members of the bar, representation on the basis of sex is seen to be unnecessary.

NUMBER OF BENCHERS

Under the provisions of the Law Society Act, there are forty elected benchers, four appointed ("lay") benchers, the Treasurer and an indeterminate number of persons who are benchers ex officio.

There has been a growing awareness of the heavy workload entailed in serving as a benchers. In the early months of its existence, your Committee considered one of its functions to be an investigation of ways in which the workload of benchers might be alleviated. It subsequently became clear that this was a matter that was under active consideration by the Subcommittee on Benchers' Responsibilities established by the Research and Planning Committee. Accordingly, your Committee makes no recommendations on the matter of benchers' workload. Nevertheless, arguments have been advanced that an increase in the number of benchers would alleviate the workload problem. Your Committee does not consider this an appropriate solution to the problem, and understands that the Subcommittee on Benchers' Responsibilities is of the same opinion.

It is the view of the Committee that the policy-making function of Convocation would not be assisted by an increase in the number of benchers.

Your Committee has also borne in mind the spatial limitations of Osgoode Hall and the probability that a decentralization of the decision-making process might occur if numbers were increased. More significantly, with an increase in the number of benchers, it would be difficult to avoid the creation of an "inner group" which would manage the affairs of the Society and make the executive decisions. Your Committee believes that such consequences should be carefully studied before a decision is made to increase the number of benchers.

52% of those who responded to the survey were opposed to an increase in the number of benchers.

At the same time, your Committee is aware that proposals currently coming forward from other committees, particularly the Special Committee on Discipline Procedures, if adopted by Convocation, may well have the effect of increasing significantly the demands made upon the time of benchers. Your Committee notes, however, that a Special Committee on Practice Requirements Reform Implementation has been established to make recommendations on the implementation of the reports concerning reforms in the areas of complaints, discipline and professional standards. Your Committee is of the view that it would be appropriate for that Special Committee to review the need for an increase in the number of benchers in the light of the various proposals for reform that are being considered by Convocation. Accordingly, your Committee recommends that:

The current responsibilities of benchers are not such as to justify an increase in the number of benchers but this matter should be considered by the Special Committee on Practice Requirements Reform Implementation in light of any reforms that are adopted by Convocation.

Your Committee was informed that the proposals for reform currently before Convocation might require an amendment to the Law Society Act to provide for an increase in the number of appointed ("lay") benchers. If such an increase were to be proposed, the number of elected benchers would need to be re-considered. Again, however, this is a matter for the Special Committee charged with implementation of the reforms. Accordingly, your Committee recommends that:

If Convocation decides to recommend an increase in the number of lay benchers, the number of elected benchers should be considered by the Special Committee on Practice Requirements Reform Implementation.

NON-BENCHER INVOLVEMENT

Whether or not the number of benchers is to be increased, your Committee is persuaded that a greater reliance on non-benchers would be of considerable assistance to benchers in the discharge of their responsibilities. In particular, your Committee favours a greater involvement of non-benchers in the discipline process: it notes, however, that this is a matter falling within the mandate of the Special Committee on Discipline Procedures.

Non-bencher involvement was favoured by 72% of the respondents. It was suggested by a number of respondents that the benchers restrict themselves to policy matters and place greater reliance on Law Society staff in administration.

Your Committee recommends that:

Rather than increasing the number of benchers, the Society should look to its membership for assistance in committee work of all kinds.

LENGTH OF TERM / STAGGERED TERMS

Your Committee noted that the Law Society of Upper Canada has the longest term of office for benchers of any law society in Canada (see the compilation of provisions relating to the election of governing bodies among the law societies of Canada at Appendix #5). Your Committee considered decreasing the length to a three year term, but could determine no clear benefits to be derived from such a change. 75% of the respondents were against decreasing the length of the term.

71% of questionnaire respondents favoured staggered terms. Such terms would enhance access to the office of bencher and ensure greater continuity in Convocation and committees. Your Committee recommends:

Further consideration should be given to a system of staggered terms, retaining the four-year term but holding elections every two years. This proposal to be enacted when reasonably possible and subject to review by the Finance and Administration Committee.

Your Committee discussed a limitation on the number of terms that a bencher can serve, but concluded that this would amount to unwarranted interference in the democratic process. To the extent that a limitation on length of service is suggested as a means of "rejuvenating" Convocation, your Committee observes that "rejuvenation" occurs in the natural course and does not need to be encouraged artificially by a maximum term.

An overwhelming majority of respondents (95%) believed that benchers should serve for as long as members continue to express confidence in them through their vote.

EX OFFICIO BENCHERS

There are four broad categories of ex officio bencher created by the Law Society Act:

1. Law Officers of the Crown
The Attorney General for Canada, the Solicitor General for Canada and the Attorney General for Ontario are benchers ex officio by virtue of paragraphs 1-3 of s.12(1) of the Act.
2. Former Attorneys General for Ontario
Every person who has held the office of Attorney General for Ontario is a bencher ex officio by virtue of paragraph 4 of s.12(1) of the Act.
3. "Life Benchers"
Every person who was elected at three quinquennial elections and served as a bencher for fifteen years, and every person who is elected at four elections and who serves as a bencher for sixteen years, is a bencher ex officio by virtue of paragraphs 7 and 9 of s.12(1) of the Act.
4. Former Treasurers
Every member who has been or is elected to the office of Treasurer is a bencher ex officio by virtue of s.14 of the Act.

Voting Rights of Ex Officio Benchers

1. The Attorney General for Canada and the Solicitor General for Canada may not vote in Convocation or in committees.
2. The Attorney General for Ontario may vote in Convocation and in committees.
3. Former Attorneys General for Ontario may not vote in Convocation. They may vote in committees other than committees appointed for disciplinary purposes.
4. "Life benchers" may not vote in Convocation. They may vote in committees other than committees appointed for disciplinary purposes.
5. Former Treasurers have all the rights and privileges of elected benchers.

The Questionnaire

The letter sent to all members of the profession asked whether the qualifications for the status of ex officio bencher should be changed. A significant number of respondents were unaware of the role played by ex officio benchers. 55% of the respondents did not want the qualifications changed. Of those who indicated a wish to see change, over half proposed that the status be abolished.

"Life Benchers"

While acknowledging the valuable contribution that has been made to Convocation and its committees by many "life benchers" your Committee is of the opinion that the Society should be governed by persons who are elected by the profession. At the same time, your Committee recognizes that there are, at present, benchers who are in their sixteenth year as members of Convocation. It seems to your Committee entirely proper that the reasonable expectations of these members should be realized and that they should become benchers ex officio in April 1991. Accordingly, your Committee recommends that:

Following the creation of ex officio benchers under paragraph 9 of subsection 12(1) of the Law Society Act in the spring of 1991, an amendment to the Law Society Act should be sought whereby no further persons would be appointed benchers ex officio under the provisions of that paragraph.

Former Treasurers

During the course of the Committee's existence, one member, Mr. James M. Spence, was elected Treasurer of the Society. He declared an interest in the matter of former Treasurers becoming benchers ex officio and took no part in discussions on the issue.

To the extent that it falls within its mandate, your Committee is of the view that there should be no change to the practice of granting to former Treasurers the status of ex officio bencher with all the rights and privileges of an elected bencher. Your Committee notes that the Special Committee on Voting Procedures and Non-Bencher Appointments came to the same conclusions in its report of February 23, 1989.

REMUNERATION

Concern has been expressed that some members are deterred from running for election because they could not afford the loss of income that would be entailed in fulfilling their responsibilities as benchers over a period of four years. Your Committee reviewed various methods of remunerating benchers, but was unable to reach a consensus.

It was agreed that if any system of remuneration is introduced, it must not be one which encourages members to run for election in the hope of monetary reward. Under one scheme considered by the Committee, a bencher would have been entitled to remuneration at the Legal Aid rate for attendance at Convocation, but only if the bencher:

1. had been elected at the beginning of the quadrennial term;
2. had been called to the bar for a period of less than eight years at the time of election; and
3. practised under conditions in which there were fewer than seven other members of the Society in association or partnership with the bencher, or fewer than seven other members of the Society working for the bencher's employer.

Your Committee recognizes that costs to the membership for the maintenance of a program of remuneration would be significant.

60% of the respondents to the questionnaire were opposed to the remuneration of benchers. Many believed that the honour and privilege of serving as a bencher were sufficient reward and that there was no need for other compensation.

Your Committee recommends that:

There should be further study of ways to overcome the financial obstacles which deter members from running for election.

ELECTORAL PROCESS

The Committee reviewed the contents and distribution of campaign materials and decided that:

The Society should absorb the costs of a bulk mailing in which each candidate would be allowed one side of a page, the content to be decided by the candidate, subject to the constraints contained in the laws of libel, the Rules of Professional Conduct and the principles of good taste.

Your Committee was of the view that members of the profession need more information on the candidates in order to make an informed choice. Your Committee was opposed to the Society editing candidates' statements, save for the exceptions noted above, as this might be viewed by members of the profession as an attempt to protect the position of incumbents and inhibit the free flow of information.

Your Committee recognized the need, however, for a disclaimer with the bulk mailing that would stipulate that the views contained in the materials of the mailing were not necessarily those of the Law Society.

63% of the respondents to the questionnaire favoured changes to the electoral process including a cap on election expenses. Your Committee noted that this would be difficult to monitor. It was agreed that your Committee did not have sufficient information on the cost of electoral campaigns and it is therefore recommended that:

Following the 1991 election, the Society should canvass candidates, on an anonymous basis, to ascertain the estimated cost of their campaigns.

The Committee agreed to refer the matter of the mechanics of the electoral process for the forthcoming election to the newly struck Advisory Committee on Benchers' Elections.

VOTER TURNOUT

Your Committee was alarmed by the decreasing participation in the election of Benchers (71.2% in 1979, 62.5% in 1983 and 54.1% in 1987).

Your Committee recommends that:

Various measures by the Law Society, such as a series of advertisements in the legal newspapers and periodicals before and during the election, and a public forum, should be explored in order to increase voter turnout at elections.

IMPLEMENTATION OF THIS REPORT

By paragraph 6 of section 62(1) of the Law Society Act, Convocation is given power to make rules providing for the time and manner of and the methods and procedures for the election of benchers.

The provisions that Convocation has made are to be found at Rules 7-18 (Appendix 6). It is within the power of Convocation to amend, or to add to these Rules. The only constraints upon the powers of Convocation in this matter are to be found in sections 15-21 of the Law Society Act (Appendix 7).

In the final part of this Report, your Committee's recommendations are grouped as follows:

- (1) Recommendations that can be implemented by Convocation.
- (2) Recommendations that will require amendment of the Law Society Act if they are to be implemented.
- (3) Recommendations for consideration by other committees.
- (4) Suggested wording for amendments to the Rules where necessary to implement those changes that are within the power of Convocation.

ALL OF WHICH is respectfully submitted this 26th day of October 1990.

Roderic G. Ferguson
Chair
The Special Committee on
Bencher Elections

SUMMARY OF RECOMMENDATIONS

- (1) Recommendations that can be implemented by Convocation
The seven regions outside the Municipality of Metropolitan Toronto prescribed under s. 92a of the Courts of Justice Act, 1984, S.O. 1984, c. 11, as amended, be established as electoral regions.

The following four electoral regions should be established within the Municipality of Metropolitan Toronto: (1) The City of Toronto. (2) The Borough of East York and The City of Scarborough. (3) The City of York and The City of Etobicoke. (4) The City of North York.

There should be one benchers elected from each of the eleven electoral regions. The remaining thirteen benchers from outside Metropolitan Toronto and the remaining sixteen benchers from within Metropolitan Toronto should be elected by all voters in the province, as at present.

The benchers who are elected as regional representatives be elected only by the votes of voters within their own regions.

Convocation should make a rule providing that, for purposes of s. 21 of the Law Society Act, where there is a failure to elect the requisite number of benchers from a particular electoral region or where there is a vacancy in the requisite number of benchers from a particular electoral region, the term "qualified member" shall mean a member whose address on the records of the Society on the last day for nominations for the last quadrennial election of benchers was within that particular region.

Rather than increasing the number of benchers, the Society should look to its membership for assistance in committee work of all kinds.

The Society should absorb the costs of a bulk mailing in which each candidate would be allowed one side of a page, the content to be decided by the candidate, subject to the constraints contained in the laws of libel, the Rules of Professional Conduct and the principles of good taste.

Following the 1991 election, the Society should canvass candidates, on an anonymous basis, to ascertain the estimated cost of their campaigns.

Various measures by the Law Society, such as a series of advertisements in the legal newspapers and periodicals before and during the election, and a public forum, should be explored in order to increase voter turnout at elections.

(2) Recommendations that will require amendment of the Law Society Act if they are to be implemented.

Further consideration should be given to a system of staggered terms, retaining the four-year term but holding elections every two years. This proposal to be enacted when reasonably possible and subject to review by the Finance and Administration Committee.

Following the creation of ex officio benchers under paragraph 9 of subsection 12(1) of the Law Society Act in the spring of 1991, an amendment to the Law Society Act should be sought whereby no further persons would be appointed benchers ex officio under the provisions of that paragraph.

(3) Recommendations for consideration by other committees

The current responsibilities of benchers are not such as to justify an increase in the number of benchers but this matter should be considered by the Special Committee on Practice Requirements Reform Implementation in light of any reforms that are adopted by Convocation.

If Convocation decides to recommend an increase in the number of lay benchers, the number of elected benchers should be considered by the Special Committee on Practice Requirements Reform Implementation.

There should be further study of ways to overcome the financial obstacles which deter members from running for election.

- (4) Suggested wording for amendments to the Rules where necessary to implement those changes that are within the power of Convocation.

It is recommended that the following amendments be made to the Rules under subsection 62(1) of the Law Society Act:

1. Rule 10 of the said rules is amended:
 - (a) by adding the following paragraph to subrule 10(2):
 - (f) may be accompanied by an election statement, typed in regular size type on no more than one side of paper measuring 8-1/2 ins. x 11 ins. (21.5 cms x 28 cms).
 - (b) by adding the following subrules:
- (5) The Secretary shall arrange for each election statement to be re-typed in a standard format.
- (6)
 - (a) Where, in the opinion of the Secretary, an election statement infringes the laws of libel, the Rules of Professional Conduct or the principles of good taste, the Secretary shall refer the statement to the Treasurer.
 - (b) The Treasurer will appoint two or more ex officio benchers to serve as an editing committee to edit the election statement
 - (c) The decision of the editing committee shall be final and the candidate shall immediately be notified of the committee's decision.
 - (d) A statement that has been edited by the editing committee shall not contain any mention of the fact that it has been edited unless the candidate so requests.
 - (e) A candidate who does not agree with the decision of the editing committee has the right to request that the edited statement not be distributed.
 - (f) A request that an edited statement not be distributed must be received by the Secretary no later than twenty-four hours after notice of the decision of the editing committee was sent to the candidate.
 - (g) Provided that a request not to distribute an edited statement is received within the time set out in paragraph (f) above, all copies of the statement will be withdrawn from the materials to be sent to electors. Failing receipt of a request within twenty-four hours, as provided for in paragraph (f) above, the edited statement will be included with the materials to be sent to electors under subrule 12(1) below.
2. Subrule 12(1) of the said rules is amended by adding, after the word "envelopes" in the fourth line, the following words:

the election statements received from candidates,
3. Rule 14 of the said rules is repealed and the following substituted therefor:

Certification of Result

14 (1) For purposes of this rule,

- (a) a reference to a person, a voter or a candidate from or within a city, a municipality, a borough or a judicial region, is a reference to a person, a voter or a candidate whose address on the records of the Society on the last day for nominations was in that city, municipality, borough or judicial region, as the case may be;
- (b) "judicial region" means a region prescribed under s. 92a of the Courts of Justice Act, 1984, S.O. 1984., c.11 as amended.
- (c) "electoral region" means a geographical area defined in any of the paragraphs (a)-(m) of subrule (2).

(2) Subject to subrule 3:

- (a) The person among the candidates from the City of Toronto who has the highest number of votes cast by voters within the City of Toronto, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
- (b) The person among the candidates from the Borough of East York and the City of Scarborough who has the highest number of votes cast by voters within the Borough of East York and the City of Scarborough, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
- (c) The person among the candidates from the City of York and the City of Etobicoke who has the highest number of votes cast by voters within the City of York and the City of Etobicoke, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
- (d) The person among the candidates from the City of North York who has the highest number of votes cast by voters within the City of North York, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
- (e) The sixteen other persons from the Municipality of Metropolitan Toronto who have the highest number of votes casts by voters from every electoral region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as benchers.
- (f) The person among the candidates from the North West judicial region who has the highest number of votes cast by voters within the North West judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
- (g) The person among the candidates from the North East judicial region who has the highest number of votes cast by voters within the North East judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.

- (h) The person among the candidates from the East judicial region who has the highest number of votes cast by voters within the East judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (i) The person among the candidates from the Central East judicial region who has the highest number of votes cast by voters within the Central East judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (j) The person among the candidates from the Central West judicial region who has the highest number of votes cast by voters within the Central West judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (k) The person among the candidates from the Central South judicial region who has the highest number of votes cast by voters within the Central South judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (l) The person among the candidates from the South West judicial region who has the highest number of votes cast by voters within the South West judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (m) The thirteen other persons from outside the Municipality of Metropolitan Toronto who have the highest number of votes cast by voters from every electoral region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as benchers.
- (3)
- (a) If there is any person certified as having been elected as a bencher under paragraphs (a), (b), (c), (d), (f), (g), (h), (i), (j), (k), or (l), of subrule(2) who by virtue of such election becomes an ex officio bencher, the scrutineers shall so report and, subject to subrule(4) of rule 13, the person among the candidates from that electoral region having the next highest number of votes cast by voters within that electoral region shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (b) If there is any person certified as having been elected as a bencher under paragraph (e) of subrule(2) who by virtue of such election becomes an ex officio bencher, the scrutineers shall so report and, subject to subrule(4) of rule 13, the person among the candidates from the Municipality of Metropolitan Toronto having the next highest number of votes cast by voters from every electoral region shall be certified forthwith by the Secretary as having been elected as a bencher.

- (c) If there is any person certified as having been elected as a benchner under paragraph (m) of subrule(2) who by virtue of such election becomes an ex officio benchner, the scrutineers shall so report and, subject to subrule(4) of rule 13, the person among the candidates from outside the Municipality of Metropolitan Toronto having the next highest number of votes cast by voters from every electoral region shall be certified forthwith by the Secretary as having been elected as a benchner.

4. The said rules are further amended by adding the following rule after rule 18:

Vacancies

18. A. For purposes of s. 21 of the Law Society Act, where there is a failure to elect the requisite number of benchners from a particular electoral region or where there is a vacancy in the requisite number of benchners from a particular electoral region, the term "qualified member" shall mean a member whose address on the records of the Society on the last day for nominations for the last quadrennial election of benchners was within that particular region.

LIST OF APPENDICES

1. Letter to members of the legal profession, March 30, 1990.
2. Executive summary of responses to the questionnaire.
3. Submission on Benchers Election Reform submitted by the Committee for Benchner Accountability, March 23, 1990.
4. Brief to the Special Committee on Benchner Elections from the County and District Law Presidents Association.
5. Compilation of provisions relating to the election of governing bodies among the law societies of Canada.
6. Rules 7-18 made under s. 62(1) of the Law Society Act, R.S.O. 1980, c. 233.
7. Sections 15-21 of the Law Society Act, R.S.O. 1980, c. 233.
8. Financial implications of recommendations for changes to come into force in time for the 1991 quadrennial election of benchners.
9. Map of the judicial regions established under s. 92a of the Courts of Justice Act, 1984, as amended.

Also attached with the Report on Benchner Elections is a copy of a letter from Mr. Colin McKinnon to Mr. Roderic Ferguson dated October 23, 1990 re: Report to Convocation and a copy of a letter from Mr. Donald Posluns to Mr. Richard Tinsley dated October 24, 1990 re: Opinion concerning the Regional Election of Benchners.

It was moved by Mr. Bragagnolo, seconded by Mr. McKinnon that the Report on Benchers Elections be put over until after the County and District Plenary session scheduled for November 8th and 9th, 1990.

Carried

It was moved by Mr. Bastedo, seconded by Mr. Wardlaw to defer the ex-officio Benchers issue until completion of debate on Benchers Elections and vote.

Not Put

.....

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

It was moved by Mr. Ground, seconded by Mr. Guthrie THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from the 26th of October 1990 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(See list in Convocation file)

.....

DISCIPLINE COMMITTEE

Mr. Lamak presented the Report of the Discipline Committee of its meeting on October 11th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

The Policy Section met on Thursday, the 11th of October, 1990, at 1:30 p.m, the following members being present: C.L. Campbell (in the Chair), T.J.P. Carey, S. Lerner, C.D. McKinnon, A.M. Rock, S. Thom, R.C. Topp.

Also present: R.L. Anderson, M.J. Angevine, D. Ashby, A.M. Brockett, S.J. Carlyle, J.R. Conway, L.A. Goodfield, J.S. Jenkins, J.S. Kerr, G. MacKenzie, J.W. Southey, J.C. Varro, J.N. Yakimovich.

A.

POLICY

1. INVESTIGATION OF THIRD PARTY COMPLAINTS WHERE LITIGATION IS PENDING

At its meeting on June 14, 1990, your Committee recommended an interim procedure for dealing with complaints from a third party opposed in interest to the client of the solicitor against whom the complaint is brought. Convocation adopted the interim procedure on June 22, 1990. Your Committee has now received a report on the matter from a subcommittee comprising Colin McKinnon, Austin Cooper, Netty Graham and Scott Kerr.

The subcommittee recommended that the interim procedure become the policy of the Law Society, subject to the following additions and modifications:

- a. In all cases, the lawyer against whom the complaint is laid should be required to provide the Law Society with a full and frank response.

- b. In appropriate cases, on the basis of such response, staff should advise the complainant that the complaint does not warrant further investigation and that the file will be closed.
- c. Where further investigation appears to be warranted, the normal policy should be to hold such investigation in abeyance until the litigation is concluded.
- d. Where the staff consider that immediate investigation is required, but where the lawyer objects, the investigation may proceed only with the approval of the Chair, Vice-Chair or a designated member of the Discipline Committee.
- e. Where an investigation is to proceed during the course of litigation, the lawyer is to be notified of the right to request that all or part of the information supplied in response to the complaint not be disclosed to the complainant. Where such a request is made, the Law Society will not disclose the information.

Your Committee accepted the report of the subcommittee and recommends its adoption by Convocation. The report is attached at pages A-1 to A-3.

B.

ADMINISTRATION

No matters to report.

C.

INFORMATION

1. DEPOSIT OF UNCERTIFIED CHEQUES INTO TRUST ACCOUNTS

At the September meeting of the Committee, there was discussion about the practice of making disbursements from a trust account when the funds against which the disbursement is made are in the form of an uncertified cheque that has not yet been cleared. It was agreed to propose to the Professional Conduct Committee that a joint subcommittee be appointed to study the matter and that a nominee of the County and Districts Liaison Committee be included on the subcommittee.

A joint subcommittee has been established consisting of Allan Rock, Douglas Thoman, Robert Topp and Michael O'Dea. Donald Lamont is also to be invited to join the subcommittee. Donald Godden (Practice Advisory Service) is serving as secretary.

2. ADJOURNMENTS OF DISCIPLINE HEARINGS

Your Committee received a memorandum from Sandra Chapnik suggesting the need for a policy to govern applications for adjournments of discipline hearings. As a first step, the staff have been asked to prepare recommendations for consideration by the Committee.

3. DISCIPLINE HEARINGS OUTSIDE TORONTO

The staff have been asked for their views on the suggestion that a greater number of discipline hearings should be held outside Toronto where appropriate.

4. CONDUCT UNBECOMING

The report of the meeting of this Committee held on September 13, 1990, indicated that the Committee proposed to address the issue of whether a conviction, or repeated convictions for driving while impaired, constituted "conduct unbecoming." The Committee wishes to make clear that it will look at a number of offences and will not confine its discussion to matters of impaired driving.

5. AUTHORIZATION OF DISCIPLINE CHARGES

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

The following table shows the number of requests made by Discipline and Complaints staff for the month of September, 1990:

	<u>Sought</u>	<u>Obtained</u>
Discipline	14	14 (of which 10 were for failure to file Forms 2/3)
Complaints	13	10
Audit	3	2

Total Number of Charges Authorized to Date for 1990

January	17	
February	47	(35 of the February authorizations were for failure to file Forms 2/3)
March	19	
April	7	
May	4	
June	47	(17 of the June authorizations were for failure to file Forms 2/3)
July	5	
August	30	
September	26	(14 of the September authorizations were for failure to file Forms 2/3)

ALL OF WHICH is respectfully submitted

DATED this 26th day of October, 1990

"P. Lamek"
Chair

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

A-Item 1 - Report of the Subcommittee on "Third Party" Complaint.
(Marked A-1 - A-3)

THE REPORT WAS ADOPTED

.....

ORDERS

Mr. Lamek presented six Orders of Convocation to be recorded in the Minutes of Convocation.

ORDER

Re: ROBERT EARL STAFFORD, St. Thomas

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Robert Earl Stafford,
of the City of St. Thomas, a
Barrister and Solicitor (hereinafter
referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 18th day of June, 1990, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

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

DATED this 27th day of September, 1990

"James M. Spence"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

ORDER

Re: DAVID CARSON BIRD, Toronto

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David Carson Bird,
of the City of Toronto, a
Barrister and Solicitor (hereinafter
referred to as "the Solicitor")

26th October, 1990

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 19th day of September, 1990, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

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

DATED this 27th day of September, 1990

"James M. Spence"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

ORDER

Re: FRANK SETH COOK, Toronto

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Frank Seth Cook,
of the City of Toronto, a
Barrister and Solicitor (hereinafter
referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 10th day of September, 1990, in the presence of Counsel for the Society, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

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

DATED this 27th day of September, 1990

"James M. Spence"
Treasurer

(SEAL-The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

26th October, 1990

ORDER

Re: THOMAS TEDD SAHAIDAK, Toronto

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Thomas Tedd Sahaidak,
of the City of Toronto, a
Barrister and Solicitor (hereinafter
referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 25th day of July, 1990, in the presence of Counsel for the Society, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

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

DATED this 27th day of September, 1990

"James M. Spence"
Treasurer

(SEAL-The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

ORDER

Re: OREST WASYL HRYNKIW, Toronto

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Orest Wasyl Hrynkiw,
of the City of Toronto, a
Barrister and Solicitor (hereinafter
referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 2nd day of August, 1990, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

26th October, 1990

CONVOCATION HEREBY ORDERS that the rights and privileges of the said Orest Wasyl Hrynkiw be suspended for a period of two months and thereafter indefinitely, until such time as the debt together with interest has been repaid to his client.

DATED this 27th day of September, 1990

"James M. Spence"
Treasurer

(SEAL-The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

ORDER

Re: WILLIAM GEOFFREY MILNE, Toronto

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF William Geoffrey Milne, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 8th day of March, 1989, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of conduct unbecoming and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the rights and privileges of the said William Geoffrey Milne be suspended until the Solicitor successfully completes the next Bar Admission Course including the articling period.

DATED this 27th day of September, 1990

"James M. Spence"
Treasurer

(SEAL-The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

.....

HARRY KOPYTO - REQUEST FOR COSTS

Mr. Lamek presented an application for costs in regard to the complaint of professional conduct regarding Mr. Kopyto's comments about the courts and the policy.

(See memorandum in Convocation file)

Ms. Kiteley, Mrs. Weaver, Mr. Bastedo and Mr. Carter withdrew from Convocation and did not participate or vote in this matter.

It was moved by Mr. Strosberg, seconded by Mr. Ground that Convocation in its discretion declines to pay costs.

Carried

.....

PROFESSIONAL CONDUCT COMMITTEE

Mr. Somerville presented the Report of the Professional Conduct Committee of its meeting on October 11th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of October, 1990 at three o'clock in the afternoon, the following members being present: Messrs. Somerville (Chair), Thoman (Vice-Chair), Campbell, Carey, Cullity, McKinnon and Ms Chapnik. Messrs. Lamont and Wardlaw attended at the request of the Committee.

B.

ADMINISTRATION

1. PROPOSALS FROM THE CANADIAN IMPERIAL BANK OF
COMMERCE TO ATTRACT CUSTOMERS WISHING MORTGAGES

Prior History

The Committee discussed these proposals at the September meeting. The Chair did not participate in the discussion. The Vice-Chair was in the Chair. This item was in the September Report to Convocation but was deleted. It read as follows:

The Canadian Imperial Bank of Commerce has submitted two proposals for the Committee's consideration. In a competitive mortgage market the bank is anxious to interest consumers in its mortgages. One way is for the bank to underwrite the legal fees involved in the mortgage transaction.

Set out below is the submission from the bank:

As you are aware the mortgage market is extremely competitive and in order to attract new business and to retain its market share, CIBC Mortgage Corporation ("CMC") would like to offer a legal fees saving to customers. The proposals in this regard are as follows:

1. CMC will specify a price which will include both legal fees and disbursements. Any law firms which are prepared to do the work required by CMC in respect of a refinancing will be permitted to participate in the program. A list of firms which do the work for the specified price will be provided to customers or in the alternative they may approach the solicitor of their choice. The customer would be expressly advised that a participating law firm is acting solely for CMC.
2. CMC will arrange with a designated law firm for a legal fee package which can be offered to customers purchasing a home and obtaining a mortgage from CMC. Such a legal fee package would represent a considerable saving to the customer and would include the work to be done on behalf of the customer as purchaser and on behalf of CMC as mortgagee. Alternatively, rather than designating a firm, CMC could set a fixed price. Any law firms may participate which are prepared to do the work at the specified price.

The above proposals benefit CMC because of the potential to attract new customers and to offer superior service and financial benefits than could be obtained elsewhere. The participating law firms will benefit by attracting a volume of work which will justify the lower than usual fees and also by the exposure to customers who may require further legal services in the future.

We are satisfied that lawyers participating under the first proposal would not infringe the Rules of Professional Conduct since they will clearly be acting for CMC. The second proposal presents more difficulties, however we feel that if any law firm may participate there can be no question of steering.

The Committee concluded that the first proposal was in order and that the first part of the second proposal was not in order. The Committee also concluded that the second part of the second proposal beginning with the words "Alternatively" was completely in order. The approval is given on the basis of the freedom of choice of lawyers.

It was felt that the Committee could profit from the input of Messrs. Lamont and Wardlaw. Secondly, the CIBC has been advertising a refinancing package described in the attached pamphlet as the "\$399 Legal Fee Package". (numbered 1)

Conclusions of the October Meeting

Once again the Vice-Chair chaired the meeting.

The Committee heard from Mr. Brice Hatt, a Senior Solicitor with the Legal Department of the CIBC. Messrs. Lamont and Wardlaw were present.

The Committee identified a number of concerns that prevented it from giving its approval to any of the three proposals referred to above.

These concerns are:

1. Possible confusion in the mind of the mortgagor that the lawyer acting for the bank is also acting for the mortgagor which is not the case. In the first proposal and in the "\$399 Legal Fee Package" the lawyer represents only the bank. In the second proposal the lawyer would probably be representing both the bank and the purchaser-mortgagor.

2. The scope for steering that could possibly occur with these proposals with the resulting lack of choice of lawyer for the client; that is, with the second proposal set out above, the likelihood is that the purchaser will use the same lawyer as the bank.
3. There is the greater possibility of lawsuits against the lawyer by the bank and by the mortgagor. For example, with respect to the "\$399 Legal Fee Package" for the refinancing of a mortgage, the CIBC is only asking for a very limited legal service. No certificate as to the title the bank is receiving is required according to the bank's counsel; only a subsearch on title is required. The bank is receiving only a limited service which is out of character with the traditional services a mortgagee-client customarily expects. Hence there is the possibility of more suits against lawyers and a greater drain on the Law Society's insurance.

As well, there is the potential for claims by the mortgagors against the bank's lawyer because they believed he was representing them and looked to him to protect their interests; they did not understand the consequences of a failure to make the required payments including the potential loss of their properties. For example, the CIBC "\$399 Legal Fee Package" does not make it clear that the bank's lawyer is not also the lawyer for the mortgagor.

4. There is a lack of specifics in all three proposals as to the nature of fees and disbursements for which the mortgagor will be responsible. Rule 9 of the Rules of Professional Conduct requires that those responsible for paying a lawyer's fees and disbursements should be advised in advance of the nature and quantum of disbursements to be incurred. This is particularly lacking in the brochure respecting the "\$399 Legal Fee Package".
5. The one piece of advertising that the Committee has seen the "\$399 Legal Fee Package" could be described as misleading advertising because it does not make it clear enough that the borrower will not be represented by the bank's lawyer and because it does not up-front all the costs involved. These hidden costs are set out in fine print at the bottom of the last page of the brochure.

The Committee recommends to Convocation that it decline at the moment to approve any of the proposed schemes for the reasons noted above.

It is, of course, open to the CIBC to submit further proposals that would address the concerns the Committee has raised.

C. INFORMATION

1. POSITION OF THE OTTAWA STUDENT LEGAL AID SOCIETY:
THE SOCIETY WILL NOT AS A MATTER OF POLICY
REPRESENT MEN ACCUSED OF ASSAULTING WOMEN WHERE
THERE IS A RELATIONSHIP BETWEEN THE PARTIES

This item was also referred to the Chair of the Legal Aid Committee which does not meet until November 8th.

The University of Ottawa Student Legal Aid Society has made a decision that has upset the defence bar in the City of Ottawa. As a matter of policy those students participating in the Society's program will not represent men accused of assaulting women to whom they are married or with whom they are in a relationship.

The Student Legal Aid Societies at the six Ontario law schools receive assistance from the Ontario Legal Aid Plan. They are separate and distinct from the Community Legal Aid Clinics and the three clinics that are associated with three law schools: Parkdale (associated with the Osgoode Hall law school); Legal Assistance of Windsor (associated with the University of Windsor law school); and the Correctional Law Project (associated with the Queen's University law school).

The Treasurer has appointed a Special Committee composed of Messrs. Bastedo and Somerville and Ms Kiteley to consider this issue and to report to Convocation after consultation with the Professional Conduct Committee and the Legal Aid Committee.

ALL OF WHICH is respectfully submitted

DATED this 26th day of October, 1990

"M. Somerville"
Chair

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

B-Item 1 - CIBC advertisement - refinancing package - "\$399 Legal Fee Package". (Numbered 1)

THE REPORT WAS ADOPTED

.....

LIBRARIES AND REPORTING COMMITTEE

Mr. Murphy presented the Libraries and Reporting Committee of its meeting on October 11th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of October, 1990 at 9:30 a.m., the following members being present: D. Murphy (Chair), M. Cullity, M. Hickey, R. Lalande and Mrs. M. Weaver; D. Crosbie, G. Howell and P. Bell also attended.

A.

POLICY

No items

B.

ADMINISTRATION

1. APPLICATION TO THE LAW FOUNDATION OF ONTARIO

A. COUNTY LIBRARIES

The Chief Librarian's report on the recommended amount of the Law Society's application to the Law Foundation on behalf of County Libraries for 1991 was considered.

The recommended amount of \$987,500, is an increase of \$127,500 over the grant of \$860,000 in 1990. The \$127,500 increase consists of: a) \$45,000 for inflation and \$75,000 increase for staffing expenditures, b) \$7,500 to provide further technology (electronic typewriters, fax machines, etc.) over and above last year's capital grant of \$120,000. The figures, in chart form, are as follows:

APPLICATION FOR 1991

-Operating Grant	\$860,000
-Capital Grant	<u>\$127,500</u>

\$ 987,500

B. GREAT LIBRARY

1) Book Preservation Project

The Great Library proposes to establish a preservation centre and seeks approval for start up funding of \$ 44,500

2) Book Evaluation Proposal

The Great Library also proposes to have an evaluation done on its older materials, specifically pre-1900 Canadian and U.S. imprints, pre-1850 British imprints, and pre-1990 Commonwealth materials and seeks approval for one-time funding of

\$ <u>15,000</u>	<u>59,500</u>
	<u>\$1,047,000</u>

The Committee agreed that the total amount to be requested for 1991 should be reduced to \$1,032,000, an increase of 10% over the amount granted for library purposes in 1990. The Committee was also advised that the County and District Law Presidents Association are recommending an across-the-board increase of 9% for local library fees.

RECOMMENDATION: Your Committee recommends that the amount of the application to the Law Foundation of Ontario for 1991 funding for library purposes be in the amount of \$1,032,000. This is a 10% increase over last year's grant of \$937,500.

\$1,032,000

2. LEGAL ACCOUNT OF SOCIETY'S COUNSEL

The Secretary reported that counsel for the Law Society submitted an account for legal services rendered between May 1st, 1990 and June 30th, 1990, concerning the Ontario Reports, Weekly Parts contract and Data Base contract, and for the period March 1st to June 30th, 1990 for the analysis of the several tenders submitted on the Ontario Reports on CD-ROM.

Your Committee approved the account of counsel for the Society.

3. JURISFAX CANADA INC.-FAXING COPIES OF ONTARIO REPORTS CASES

The Secretary reported that the Sub-Committee on the Ontario Reports Data Base met on January 11th, 1990 and heard the submissions of Lloyd Duhamie, the owner and sole shareholder of the above company. Jurisfax asked for the Law Society's approval to reproduce cases from the Ontario Reports and fax them to customers (lawyers and public) for \$1.00 per page and fax transmission charges (i.e. Bell Canada long-distance telephone rates) if applicable. The Society would receive 10% of all gross revenues resulting from the sale of faxed copies of Ontario Reports cases. The Society would receive an annual report of gross sales of Jurisfax. The contract would be subject to cancellation on 30 days notice. The Society could inspect Jurisfax' books anytime to ascertain gross revenues.

The Sub-Committee on the Ontario Reports Data Base decided at its February 21st, 1990 meeting, and recommends to the Libraries and Reporting Committee that -

- 1) The Society should give Jurisfax a non-exclusive licence to reproduce cases from the Ontario Reports for a fee;
- 2) that the contract be cancellable at the Society's option, on 30 days notice;
- 3) that the contract be for a one year trial period to be renewable from year-to-year subject to the 30 day termination by the Society, and
- 4) that the contract be subject to approval of Counsel for the Society.

Your Committee recommends that the Sub-Committee report be approved and instructed the Secretary to refer the matter to counsel for the Society to draft a contract.

4. ONTARIO REPORTS - EDITOR-IN-CHIEF

The Secretary reported that he received a letter from Butterworths suggesting that the five person editorial board not have an Editor-in-Chief as in the past.

This matter was deferred until the next meeting.

C.
INFORMATION

1. BOOK LIST

The Great Library has added 123 new titles to its book collection for July, August and September, 1990 and will be adding 52 new titles to its book collection for October, 1990.

2. FINANCIAL STATEMENT

The Financial Statements for the 12 months ended June 30th, 1990, and the three months ending September 30th, 1990 were received.

3. ONTARIO REPORTS - TENDERS - DATA BASE

The Secretary reported that meetings took place on July 19th, 20th and 30th, and October 2nd, 1990 with Canada Law Book and Q.L. Systems to clarify a number of outstanding issues.

4. BUTTERWORTHS RECEPTION AND DINNER

The Secretary reported that the reception and dinner by Butterworths for the Libraries and Reporting Committee to meet the

26th October, 1990

Editorial Board of the Ontario Reports was held on Wednesday, October 10th, 1990, at 6:00 p.m. for 7:00 p.m. at the Toronto Hilton Hotel, Governor General's Suite.

ALL OF WHICH is respectfully submitted

DATED this 26th day of October, 1990

"D. Murphy"
Chair

THE REPORT WAS ADOPTED

.....

CLINIC FUNDING COMMITTEE

Mr. Bastedo presented the Report of the Clinic Funding Committee of its meeting on October 9th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAATION ASSEMBLED

The Director of Legal Aid begs leave to report:

CLINIC FUNDING

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

The Director recommends to Convocation that the report of the Clinic Funding Committee dated October 22, 1990 be adopted.

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

ALL OF WHICH is respectfully submitted

"R.L. Holden"
Director
Legal Aid

October 22, 1990

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

The Clinic Funding Committee met on October 9, 1990. Present were: Philip Epstein, Q.C., Chair, Thea Herman, Jim Frumau.

1. DECISIONS

a. Kinna-aweya Legal Clinic - Funding for Special Project

The Clinic Funding Committee has approved funding, in an amount up to \$200, to Kinna-aweya Legal Clinic for the production of 1,000 copies of a local Resource Guide, as a special outreach project.

b. Applications for Training Funds

Pursuant to s.6(1)(k) of the Regulation on clinic funding, the Committee considered and approved the allocation of training funds, as follows:

(i) Regional training funds

Metro Toronto - up to \$13,000
Eastern Ontario - up to \$40,000
Northern Ontario - up to \$50,000
Southwestern Ontario - up to \$40,000

These funds will enable clinics in the four regions of the province to continue to provide ongoing training to both new and experienced staff (including lawyers and CLWs) on procedural and substantive aspects of poverty law.

(ii) Steering Committee on Social Assistance
- up to \$7,000

These funds will enable this provincial network of clinic staff to continue to provide advanced law reform and lobbying in the area of social assistance.

(iii) Workers' Compensation Network - up to \$10,000

These funds will enable this provincial network of clinic staff to continue to provide advanced law reform and lobbying in the area of workers' compensation. The Network will also provide advanced training in substantive workers' compensation law at regional training events over the course of 1990/91.

ALL OF WHICH is respectfully submitted

"T. Bastedo"
for Philip Epstein, Q.C.
Chair
Clinic Funding Committee

October 22, 1990

THE REPORT WAS ADOPTED

.....

RESEARCH AND PLANNING COMMITTEE

Mr. Strosberg presented the Report of the Research and Planning Committee of its meeting on October 11th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of October, 1990, at 8:00 a.m., the following members being present: D.M. Hunt (in the Chair), C.L. Campbell, P.G. Furlong, R.J. Smith.

Also present: M.J. Angevine, A.M. Brockett, R.F. Tinsley.

A.
POLICY

No matters to report.

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

1. Recording of Votes in Convocation

In continuation of its review of Open Convocation, your Committee resumed its discussion of the proposal that the published proceedings of Convocation should record the names of the benchers voting for and against each motion.

Your Committee plans to invite a representative of the Committee for Bencher Accountability to address the issue. Inquiries will be made as to the practice of other law societies and other professions. The cost of a Hansard-type verbatim report of the proceedings of Convocation will also be investigated.

2. ACCESS TO LEGAL SERVICES

Your Committee considered a proposal to establish a subcommittee to examine access to legal services. The responsibilities proposed for the subcommittee were:

- To monitor the extent to which legal needs are being met by the profession.
- To formulate a statement concerning the extent of the Law Society's obligation to ensure access to legal services.
- To identify ways of increasing access to legal services.

Diana Hunt, Colin Campbell, and Robert Smith have agreed to discuss the proposal further and to report to the Committee. Preliminary inquiries will be made as to the extent to which the need for legal services is not being met. The proposal will also be discussed with the Legal Aid Committee.

3. ROLE OF THE RESEARCH AND PLANNING COMMITTEE

At its next meeting, your Committee intends to review its terms of reference to ensure that it is continuing to fulfil the role for which it was originally established.

ALL OF WHICH is respectfully submitted

DATED this 26th day of October, 1990

"H. Strosberg"
Chair

THE REPORT WAS ADOPTED

.....

FRENCH LANGUAGE SERVICES COMMITTEE

The Report of the French Language Services Committee was deferred to the November Convocation.

.....

CERTIFICATION BOARD

The Report of the Certification Board was deferred to the November Convocation.

.....

COUNTY & DISTRICT LIAISON COMMITTEE

The Report of the County & District Liaison Committee was deferred to the November Convocation.

.....

UNAUTHORIZED PRACTICE COMMITTEE

The Report of the Unauthorized Practice Committee was deferred to the November Convocation.

.....

PROFESSIONAL STANDARDS COMMITTEE

Mr. Carter presented the Report of the Professional Standards Committee of its meeting on October 11th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of October, 1990 at eleven thirty in the morning the following members being present: Mrs. Weaver (Vice Chair), Mr. Carter, Mr. Ferguson, Mrs. Legge and Mr. Wardlaw.

Also in attendance was Mr. Lamont, Chair of the Professional Standards Sub-committee on Real Estate Law.

Also present were Ms. McCaffrey, Ms. Poworoznyk, and Messrs. Kerr, and Stephany.

A.

ADMINISTRATION

1. PRACTICE REVIEW PROGRAMME - REVIEWER QUESTIONNAIRE

Over the summer, a questionnaire was circulated among lawyers who have acted as Reviewers. The general purpose of the questionnaire was to obtain some critical feedback from Reviewers on various aspects of the Review Programme.

The Committee members were provided with a summary prepared by staff, setting out highlights of the Reviewers comments as well as a number of specific recommendations for possible amendments to current policies.

Attached as B1 - B3 is a copy of the summary.

C.
INFORMATION

1. PRACTICE REVIEW PROGRAMME - PARTICIPANT STATISTICS

A report containing statistical information regarding all solicitors currently participating in the Practice Review Programme was distributed to the Committee members.

Attached as C1 - C2 is a copy of the report.

ALL OF WHICH is respectfully submitted

DATED this 26th day of October, 1990

"R. Carter"
(for) Chair

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

A-Item 1 - Memorandum from Scott Kerr, Sue McCaffrey and Joanne Poworoznyk to the Professional Standards Committee dated September 27, 1990 re: Reviewer's Questionnaire Summary of Analysis and Recommendations. (Marked B- - B3)

C-Item 1 - Practice Review Programme Participant Statistics. (Marked C1 - C2)

THE REPORT WAS ADOPTED

.....

BUILDING COMMITTEE

Mr. Lamont presented the Report and Addendum of the Building Committee of its meeting on October 10th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The BUILDING COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 10th of October, 1990 with the following persons in attendance: Chair, Donald H.L. Lamont, Q.C., Marc J. Somerville, Q.C. and the Under Treasurer, Donald A. Crosbie, Q.C.

C.
INFORMATION

Although the committee lacked a quorum, the Chair thought it advisable to proceed with the meeting so that a report on various building projects could be put before Convocation for the information of the Benchers.

The Under Treasurer reported upon the following matters:

1. Renovations and Alterations to the East Wing

(a) Completion of Renovations to Education Wing

Notwithstanding the eight week strike during the summer, the renovation of the educational wing was almost completed by the target date of September 7, 1990 and classes were successfully commenced on September 17, 1990.

(b) Estimates of Cost of the Project

The August 9, 1990 estimate of the entire project was \$13,249,011 compared to an original estimate made September 6, 1989 of \$12,484,871. It was noted that the higher figure of August 9, 1990 includes approximately \$300,000 in extra work not included in the original contract and a contingency of approximately \$380,000. The final cost should be close to the original estimate. Not included in the estimate is the cost of partitioning the new 4th, 5th and 6th floors. This work has never been part of the original contract and is estimated to cost \$500,000 - \$600,000. The contractor now estimates that the work will be completed by August 1991 rather than December 1991.

(c) Exemption from Zoning and By-law requirements

The Society successfully negotiated or obtained waivers or minor variations that have avoided any payment in lieu of additional parking spaces, loading ramps and parks levy otherwise payable. Had these requirements been imposed on the Society, the cost would have been in the order of \$500,000.

(d) Staff Moves Changed

Originally the Audit Department, Advisory Service, Public Information, C.L.E. and the Certification Board staff were to move in October 1990 from 204 Richmond Street to 20 Queen Street where they were to stay until they returned to Osgoode Hall in January 1992. However, when the contractor advised that the building would be completed by the end of August 1991 it was found that it was no more costly to remain in 204 Richmond Street than it was to move to 20 Queen Street. As the owner of 204 Richmond Street has delayed demolition of the building, it is now available for as long as we are likely to need it. Staff will stay there until they return to Osgoode Hall in September 1991. This means that we have space at 20 Queen Street that will not be used anymore.

2. Repair of Roof over Benchers' Wing

The current estimate of the cost of the replacement of the slate roof and other related stone work and flashing repairs is \$285,950. (The previous estimate ranged from \$200,000 to \$500,000.) An application for a 50% grant from the Ontario government is being made by the Society. However, the application will not be considered until April 1991 and only work done after the approval date will be cost shared. It was, therefore, decided to secure the roof for winter and to delay the repairs until spring. This coincidentally avoids having the repairs carried out during the winter period.

3. Repairs to 44 Eccles Street, Ottawa

Prior to purchasing the Ottawa building, an engineering report was obtained which inter alia identified a pressing need for work to be done on the stone facing of the building and on waterproofing the building. The current estimate of this work is between \$150,000 and \$175,000. Work is proceeding at this time with

26th October, 1990

essential repairs to the front entrance and with a thorough caulking of windows, doors, etc. at a cost of approximately \$33,000. The balance of the work will be carried out in the spring of 1991.

ALL OF WHICH is respectfully submitted

DATED this 26th day of October, 1990

"D. Lamont"
Chair

ADDENDUM

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA
IN CONVOCATION ASSEMBLED

The BUILDING COMMITTEE begs leave to report:

C.
INFORMATION

1. Change in Use of the Green Room

To most effectively use the space made available by the relocation of the existing reception area, the Green Room will be converted into an office for the Director of Administration and Finance. Although this will preclude its use as a meeting room, the courtyard infill will create space that will be used for a new discipline hearing room that can be divided into two separate hearing rooms and a conference room adjacent to the Complaints Department area. It is not anticipated that the loss of the Green Room will interfere with the scheduling of meetings.

ALL OF WHICH is respectfully submitted

DATED this 26th day of October, 1990

"D. Lamont"
Chair

THE REPORT AND ADDENDUM WERE ADOPTED

.....

FINANCE AND ADMINISTRATION COMMITTEE

Mr. Ground presented the Report of the Finance and Administration Committee of its meeting on October 26th, 1990.

Mr. Lamont did not vote on the item under Administration on the Law Society Omnibus Application.

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 Friday, the 26th of October 1990 at eight-thirty in the morning, the following members being present: Messrs. Ground (Chair), Guthrie (Vice Chair), Howie (Vice Chair), Furlong, Hall, Ms. Harvey, Messrs. Lerner, Topp, Wardlaw and Mrs. Weaver.

B.

ADMINISTRATION

1. LAW SOCIETY OMNIBUS APPLICATION TO THE LAW FOUNDATION OF ONTARIO

The requests of five Committees are included in the grant application to The Law Foundation of Ontario. These requests are outlined below together with the amounts which were approved by the Law Foundation in 1989. The total of the grant application submitted this year is \$3,350,282 compared to the approved amount of \$2,300,000 in 1989:

	<u>1990</u>	<u>1989</u> (actual)
Legal Education: (note 1)		
Regular Bar Admission Course Funding (*actual amount drawn \$639,693)	\$650,000	*\$650,000
Bar Admission Course Reform (in 1989 supplementary grants totalling \$391,600 were made available by the Law Foundation)	711,782	265,000
Articling reform project	59,500	
Libraries and Reporting: (note 2)		
County Law Libraries		
- Operating Grant	860,000	740,000
- Capital Grant	127,500	120,000
Great Library Book Collection		37,500
" " " Preservation and Evaluation	44,500	
Communications (note3) (contribution towards costs of advertising, promotion and delivery of Dial-a-Law service.	357,500	165,000
Heritage (note 4)		
Research Archival programme	125,000	95,000
Special Projects (in 1989 a grant of \$65,000 was obtained through a separate submission to the Law Foundation)	125,000	-
Law Society Gazette		
Publication of fourth issue of Gazette for 1990/91	34,000	32,500
French Language Services (note 5) (in conjunction with Legal Education Committee)		
Provision of Bar Admission Course Lecture Materials in French	255,500	155,000
(in conjunction with Libraries Committee)		
Addition of French Language materials in specific County Libraries (1989 only)		40,000
The total Omnibus Application is	<u>\$3,350,282</u>	<u>\$2,300,000</u>

26th October, 1990

Of the previous special grants for legal education of \$391,600, \$248,833 was not spent. The Society seeks to use \$197,018 of this amount for other purposes, including seminar and practice room furniture and audio/visual equipment and tapes.

The Committee was asked to approve the omnibus application and its submission to The Law Foundation of Ontario, subject to the approval by Convocation.

ALL OF WHICH is respectfully submitted

DATED this 26th day of October 1990

"J. Ground"
Chair

THE REPORT WAS ADOPTED

.....

CONVOCATION ADJOURNED AT 4:45 P.M.

.....

Confirmed in Convocation this *25th* day of *January*, 199*0*.

James J. J. J.
Treasurer