

24th January, 1997

MINUTES OF CONVOCATION

Friday, 24th January, 1997
9:00 a.m.

PRESENT:

The Treasurer (E. Susan Elliott), Aaron, Adams, Angeles, Armstrong, Backhouse, Banack, Bellamy, Bobesich, Carey, Carpenter-Gunn, R. Cass, Cole, Copeland, Cronk, Crowe, DelZotto, Epstein, Farquharson, Feinstein, Furlong, Gottlieb, Harvey, Lamont, Lawrence, Legge, MacKenzie, Manes, Marrocco, Millar, Murray, O'Connor, Ortved, Pepper, Puccini, Ross, Ruby, Sachs, Scott, Sealy, Strosberg, Swaye (conference call), Thom, Topp (conference call), Wardlaw, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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ELECTION OF BENCHER

It was moved by Mr. Crowe, seconded by Mr. MacKenzie that William N. Ortved be elected a Bencher to fill the vacancy resulting from the appointment to the Bench of Mr. Justice Stephen Goudge.

Carried

The Treasurer welcomed Mr. Ortved to Convocation.

REPORTS TAKEN AS READ

It was moved by Mr. Crowe, seconded by Mr. MacKenzie that the 2 Reports of the Director of Bar Admissions and the Draft Minutes for November 1996 be adopted.

Carried

COMMITTEE REPORTS

REPORT OF THE DIRECTOR OF BAR ADMISSIONS

Re: Call to the Bar Candidates

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Bar Admissions begs leave to report:

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates having successfully completed the Bar Admission Course now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, January 24th, 1997:

Mark Dubowitz	38th BAC
Kim Renee Martin	36th BAC

B.1.3. Transfer from another Province - Section 4

B.1.4. The following candidates having completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, January 24th, 1997:

Gerda Rienje Bloemraad	Province of Saskatchewan
Jan Edward Brongers	Province of Quebec
Gary Nachshen	Province of Quebec
Maxime Antoine Paré	Province of Quebec
Robert Raizenne	Province of Quebec
Catherine Elizabeth Skinner	Province of British Columbia

B.2. MEMBERSHIP UNDER RULE 50

B.2.1. (a) Retired Members

B.2.2. The following members who are sixty-five years of age and fully retired from the practice of law, have requested permission to continue their memberships in the Society without payment of annual fees:

Charles Borda	Brantford
Edward Cherry Burton	Thunder Bay
Harry Drexler	Toronto
William Douglas Drinkwalter	Simcoe
Anne Ruth Dubin	Toronto
Harvey Brian Joseph Edwards	Waterloo
James Craig Gaskin	Mississauga
David Graham Evans	London
John Innes Johnston	Schomberg
Donald James MacKay	Toronto
Victor Leo Maloney	Thunder Bay
Albert Joseph McComiskey	Mississauga
Robert Warden McKimm	Ottawa
Douglas George Page	Stratford
Peter Howard Hunter Ridout	Toronto
Walton Charles Rose	Oakville
Robert MacGregor Russell	Toronto
Richard Edward Dwyer Sheehy	St. Catharines
Kenneth Morton Smookler	Toronto
James Hamilton Stephens	Etobicoke
Arthur Tugwood	Agincourt

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Edward Hallman Unger	Belmont
Bruce Bernard White	Toronto

B.2.3. (b) Incapacitated Members

B.2.4. The following members are incapacitated and unable to practise law and have requested permission to continue their memberships in the Society without payment of annual fees:

David Arthur Doherty	Hamilton
David Anthony Liston	Ottawa
James Loken	Cobourg
Robert Marshall Orr	Burlington
Allen Gabriel Pancer	Toronto
Helen Lenore Roszell	Stratford
Detlef Soth	Douglas

B.2.5. (c) Termination of Rule 50

B.2.6. The following member wishes to terminate his retirement under Rule 50 and return to active status:

Jordan Dimoff	Toronto
Retired November 24, 1995	

C.
INFORMATION

C.1. READMISSIONS FOLLOWING RESIGNATION AT OWN REQUEST

C.1.1. The following former members have applied for readmission and have met all the requirements in that regard:

Marie Roza Vickie Majerovich	<u>Called:</u>
Kraay	February 16th, 1995

Resigned:
June 23rd, 1995

Gary Thomas Stanoulis	<u>Called:</u>
	April 8th, 1987

Resigned:
January 26th, 1996

Peter Donald Wendling	<u>Called:</u>
	March 25th, 1966

Resigned:
November 25th, 1994

C.2. REINSTATEMENT FOLLOWING SUSPENSION

C.2.1. The following member, suspended for non-payment of the annual fee in 1988, has been reinstated:

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C.2.2. Henry George McKenzie Called:
March 26th, 1981

Reinstated:
January 9th, 1997

C.2.3. The Regualification Examination has been waived in light of his having continued to actively practise in another Canadian common law jurisdiction.

C.3. LIFE MEMBERS

C.3.1. Pursuant to Section 49, the following members are eligible to become Life Members of the Society:

William Johnston Mulock Ottawa
Called: January 16, 1947

C.4. CHANGE OF NAME

C.4.1. From To

Laura Mary Genevieve Besant Laura Mary Genevieve Pryde
(Marriage Certificate)

Janet Elizabeth Kirby Janet Elizabeth Mills
(Marriage Certificate)

Virginia Kathleen McRae Lajeunesse Virgina Kathleen McRae
(Birth Certificate)

Alfred Macchione Alfred Antonio Macchione
(Birth Certificate)

Yvette Kadanka Yvette Morelli
(Marriage Certificate)

Stacey Elizabeth Overholt Stacey Elizabeth Overholt Parnell
(Marriage Certificate)

Kelly Lee Schlemmer Kelly Lee Webster
(Birth Certificate)

Nancy Kathleen Thomson Nancy Kathleen Brooks
(Change of Name Certificate)

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C.4. ROLLS AND RECORDS

C.4.1. Deaths

C.4.2. The following member has died:

Elliott Lloyd Marrus
Toronto

Called: November 18, 1937
Died: October 19, 1996

ALL OF WHICH is respectfully submitted

DATED this 24th day of January, 1997

THE REPORT WAS ADOPTED

REPORT OF THE DIRECTOR OF BAR ADMISSIONS

Re: Procedures Governing the Recruitment of Articling Students

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Bar Admissions begs leave to report:

PROCEDURES GOVERNING THE RECRUITMENT OF ARTICLING STUDENTS FOR THE 1998-99
ARTICLING TERM

1. A draft document entitled "Procedures Governing the Recruitment of Articling Students for the 1998-99 Articling Term" is attached (pages 1 - 7). The Procedures govern the recruitment of students seeking articles in Ontario.
2. The Procedures have been in place for over a decade. They are reviewed annually. Based on general satisfaction on the part of firms and students with the articling recruitment process, few amendments have been made to the Procedures in recent years.
3. For 1998-99, two minor amendments are proposed in response to requests from firms and students. Amendments to the Procedures are identified by a vertical bar in the right margin of the Procedures.
 - a) Amendment #1 moves back by one week the date by which applications are to be submitted by students to firms in Metropolitan Toronto (and elsewhere if the position is offered in the Matching Program) to ensure that the date of the application is not a factor in determining whether the student will receive an interview. This amendment provides firms with more time to consider applications before the call date for interviews.
 - b) Amendment #2 establishes a date by which applications are to be submitted by students to firms outside Metropolitan Toronto to ensure the date of application is not a factor in determining whether the student will receive an interview. Currently, such a date exists for recruitment in Metropolitan Toronto, and students applying for positions outside Metropolitan Toronto have requested a similar provision.

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4. Recommendation: It is recommended that the document entitled "Procedures Governing the Recruitment of Articling Students for the 1998-99 Articling Term be approved.

ALL OF WHICH is respectively submitted

DATED this 24th day of January, 1997

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

- Item 1. - Draft document entitled "Procedures Governing the Recruitment of Articling Students for the 1998-99 Articling Term". (pages 1 - 7)

THE REPORT WAS ADOPTED

DRAFT MINUTES OF CONVOCATION - November 15th, 28th and 29th, 1996

(See Draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

CALL TO THE BAR

The following candidates were presented to the Treasurer and Convocation and were called to the Bar by the Treasurer and the degree of Barrister-at-Law was conferred upon each of them. They were then taken by Mr. Lamont before Madam Justice Frances Kiteley to sign the Rolls and take the necessary oaths.

Mark Dubowitz	38th Bar Admission Course
Kim Renee Martin	36th Bar Admission Course
Gerda Rienje Bloemraad	Special, Transfer, Saskatchewan
Jan Edward Brongers	Special, Transfer, Quebec
Gary Nachshen	Special, Transfer, Quebec
Maxime Antoine Pare	Special, Transfer, Quebec
Robert Raizenne	Special, Transfer, Quebec
Catherine Elizabeth Skinner	Special, Transfer, British Columbia

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REPORT FOR INFORMATION

Lay Benchers and the Complaints Review Procedure

Ms. O'Connor, Ms. Angeles and Ms. Sealy presented the Report on the Complaints Review Procedure and their role in the handling of public complaints.

LAY BENCHERS AND THE COMPLAINTS REVIEW PROCEDURE.

Background

The Complaints Review procedure is one with which few Benchers have had any experience. The purpose of this report is to provide Benchers with some insight into the important role played by Lay Benchers in the Society's handling of public complaints.

The Lay Benchers will address Convocation in greater detail about their role in Complaints Review.

Introduction

Under the provisions of the *Law Society Act*, Lay Benchers have all the rights and responsibilities of an elected Bencher. In addition to this however, Lay Benchers also play an important oversight role in the Society's complaints process.

Attached as Appendix 1 is a copy of Rule 45 which briefly describes the role of Lay Benchers as Complaints Review Commissioners.

Process Leading to Complaints Review

With few exceptions, complaints are evaluated by staff in the Society's Complaints Department.

In many cases, a preliminary assessment of the complaint reveals that an investigation is not warranted. Some examples of situations where this occurs are as follows:

- Complaints relating solely to fee disputes.
- Complaints involving minor problems capable of being resolved over the telephone (e.g. returning client phone calls, releasing client files, honouring undertakings, etc.).
- Claims for compensation based on allegations of professional negligence.
- "Third Party" complaints - i.e. complaints made by someone other than the member's client, usually a party opposed in interest to the client in an ongoing civil dispute.

The review procedure is not available in cases where the Society determines that an investigation is not warranted.

In situations where an investigation is conducted, the task is usually performed by a lawyer or law clerk. Relevant parties are contacted and information gathered in order to enable the investigator to accurately evaluate the matter. One of 2 options are available at the conclusion of an investigation:

1. To refer the matter to the Chair and Vice-Chairs of the Discipline Committee who may authorize disciplinary proceedings or otherwise dispose of the matter; OR
2. To close the Society's file with a form of reporting letter to the complainant explaining why disciplinary action is not warranted AND offering the complainant the opportunity to have the Society's investigation reviewed by a Complaints Review Commissioner.

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The Complaints Review Procedure

A. Initial Administrative Steps

When a complainant requests a review of an investigation, the following administrative steps ensue:

1. The complainant's request is confirmed and the member is informed of the request.
2. The investigator prepares the file for review by preparing an index and tabbing its contents.
3. The file is forwarded to the Review Coordinator who is responsible for scheduling review dates and ensuring that all necessary parties are notified. Scheduling is usually done several months in advance of the proposed review date.
4. Copies of the indexed file are forwarded to the complainant, Complaints Review Commissioner and Complaints Review Counsel in advance of the scheduled review date.

B. Parties Attending a Review

Usually, five people are in attendance at a review:

- one Lay Benchers.
- the complainant (* the complainant may also attend with counsel or others).
- Complaints Review Counsel.
- the Coordinator who serves as a clerk.
- a security officer.

The Complaints Review Counsel is a private practitioner who has had no prior involvement in the matter. Their role is to respond to legal or ethical questions raised by the Commissioner. Counsel are selected from a panel and provide this service on a *pro bono* basis.

Neither the member who was the subject of the complaint nor the investigator is present at the review.

C. The Review

The review itself is an informal meeting and has none of the characteristics of a formal hearing. The length of the meeting is at the discretion of the Commissioner but most last approximately one hour. The main purposes of the review are as follows:

1. To provide the complainant the opportunity to raise concerns about the Society's investigation with an impartial, independent party; and
2. To ensure the adequacy of the investigation and the propriety of the decision to close the file.

D. Commissioner's Disposition Options

Once a review has been completed, the Commissioner will consider the matter and report his or her findings to the complainant and the Complaints Department. The most common decisions are the following:

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1. To affirm the investigator's decision to close the file.
2. To direct a further investigation as a result of new information provided at the review or because certain issues were not adequately investigated the first time.
3. To refer the member to the Professional Standards Department as a possible candidate for the Practice Review Programme.
4. To refer the matter to the Chair and Vice-Chairs of the Discipline Committee with a recommendation that some further action be taken against the member.

The member is informed of the Commissioner's disposition.

Statistical Summary

Attached as Appendix 2 are tables which provide information about the frequency with which reviews are held, their disposition and the type of complaints that have resulted in reviews.

As tables 3 & 4 indicate, the majority of cases where complaints review is requested deal with service and communication issues in the civil litigation and real estate fields.

1. Volume and Disposition Information

	1990	1991	1992	1993	1994	1995	1996 (Sep)	Total 1990 to 1996(Sep)
No. of complaint received by Law Society	4175	5250	5803	5188	5513	4852	3402	34183
No. of Matters Reviewed	142	141	182	119	164	146	121	1015
No. of Matters Closed after Review	122	119	155	98	126	105	96	821
No. of Matters Referred to Discipline after Review	10	8	7	5	6	10	9	55
No. of Matters referred to Complaints for Further Investigation After Review	10	14	7	11	22	26	7	97
No. of Matters referred to Professional Standards	N/A	N/A	13	5	10	4	8	40

2. Complaints By Area of Law

Real Estate	166
Civil Litigation	317
Criminal	71
Family	261
Wills/Estate	63
Corporate/Commercial	55
Administrative	38
Other	<u>44</u>
TOTAL	<u>1015</u>

3. Examples of Nature of Complaint

Undertakings	10
Delay	63
Conflict	63
Fail to follow client's instructions	103
Fail to communicate	35
Fail to serve or Poor Service	186
Abuse of Litigation Process	40
Poor legal advice	26
Fail to report/account	26
Misleading client	26
Sharp Practice	17

4. Five Most Common Types of Complaint - Area of Law

Real Estate

- a) Fail to serve or Poor service
- b) Conflict of interest
- c) Fail to follow client's instructions
- d) Fail to communicate
- e) Fail to account/report

Family Law

- a) Fail to follow Client's instructions
- b) Delay
- c) Fail to serve/poor service
- d) Conflict of interest
- e) Abuse of Litigation process

Wills/Estates

- a) Delay
- b) Fail to follow client's instr.
- c) Fail to serve/Poor service
- d) Fail to communicate

Civil Litigation

- a) Fail to serve or Poor service
- b) Delay
- c) Fail to follow client's instructions
- d) Abuse of litigation process
- e) Poor Legal Advice

Criminal Law

- a) Fail to follow Client's instructions
- b) Fail to serve/poor service
- c) Poor Legal Advice

Corporate Commercial

- a) Conflict of interest
- b) Fail to serve/Poor service

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

Copy of Rule 45 re: Role of Lay Benchers as Complaints Review Commissioners.

(Appendix I)

THE REPORT WAS RECEIVED

REPORT AND RECOMMENDATIONS OF THE MCLE SUBCOMMITTEE

Mr. Millar presented the Report of the MCLE Subcommittee for Convocation's approval.

December 14, 1996

POST-CALL LEARNING FOR LAWYERS

Report and Recommendations of the MCLE Subcommittee

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EXECUTIVE SUMMARY

REPORT OF THE MCLE SUBCOMMITTEE

Overview

A piecemeal approach to post-call education in Ontario has resulted in uneven access for lawyers to educational tools and opportunities. Significantly more must be done to enhance post-call legal education and to support the members of the profession in their ongoing educational efforts. Province-wide, accessible resources for post-call education are essential to the profession if its members are to be in a position to serve the public well, maintain their professional expertise, and work efficiently, without having to overcome barriers to do so.

The Law Society, the members of the profession, the Canadian Bar Association - Ontario, the law schools, county and district law associations, other continuing legal education providers, the County and District Law Presidents' Association, and library resource providers all have an interest and a responsibility to participate in the ongoing development of learning opportunities. Without a commitment by all interested parties, the improvements that must take place will falter or continue to be unexplored.

The MCLE Subcommittee report addresses both the means by which a coherent approach to post-call education may be developed and whether MCLE should be part of that approach.

Readers of the report should consider not only those sections of the report that address MCLE, but also those that address the role the overall recommendations should play in guiding the ongoing development of post-call learning for the benefit of the public and the profession.

What Considerations Underlie The Subcommittee's Recommendations?

To properly understand the Subcommittee's recommendations it is important to know the considerations upon which they are based. The report sets these considerations out in detail. In brief summary, the Subcommittee has concluded that

- There is a direct link between ongoing learning and the maintenance and enhancement of professional competence. Although other factors play a part in whether lawyers are and continue to be competent, ongoing education must be an important component of every lawyer's professional life. At the same time, however, it should be recognized that there are many daily pressures that may affect a lawyer's ability to undertake professional learning.
- Collectively the profession should have an interest and a stake both in the commitment individual lawyers make to learning and in the articulation of goals and supports that will enhance the profession's ability to pursue its competence. This collective interest arises out of a number of factors, not the least of which is the public's view of the profession as an identifiable group, and the profession's own articulation of this view.
- The Law Society has a responsibility to be involved in the post-call education of the profession. That responsibility is already displayed in the number of Law Society programs, publications, and services in place whose goal is to foster the learning process. What is missing, however, is a unifying approach to post-call education. The Law Society should fulfil a strong guiding role in the development of a meaningful plan for post-call education.

- Continuing legal education encompasses a wide range of learning methods, both "private" in the form of research, reading, exchange of ideas through discussion with colleagues, and experience, and "public" in the form of continuing legal education programs, seminars, courses, and discussion groups. The professional development and education members undertake should include both forms of learning.
- Serious efforts to enhance learning opportunities for the profession must be made by all groups with an interest in post-call education. There must be an ongoing assessment of needs and a commitment by all interested parties to create the framework for supports and their implementation.
- In large part the MCLE debate is based on different views of the role of a governing body in a self-regulating profession; on what goals such an initiative must be based in order to justify its introduction; and on the degree of evidence necessary to demonstrate that such an initiative would be effective. Added to the Ontario debate on the principle of MCLE are issues related to the economic climate, including its impact on the practice of law, the Law Society's involvement, and delivery and cost issues.
- The analysis of MCLE has been done in the context of an inquiry into the means by which to maintain and enhance competent performance, not out of a need to deal with a profession whose performance standards are insufficient. For this type of profession-wide initiative to be appropriate, it must assist the profession overall. As an additional or perhaps included goal, such a program may assist in reducing errors and omissions by educating the profession in risk avoidance issues, but the Subcommittee does not believe the introduction of the program could necessarily be justified on the basis that it is a solution to errors and omissions.
- Based on the Subcommittee's belief in the need for meaningful learning supports, if MCLE is to be recommended as an initiative it must be because it is viewed as an important component in the mosaic of those supports.

What Does The Subcommittee Recommend?

In its report the Subcommittee makes four recommendations for Convocation to consider and includes detailed steps (action plans) by which to implement the recommendations. The report discusses each recommendation in detail and the reasons behind the approaches the Subcommittee has taken. Together these recommendations represent a plan for developing an approach to post-call education that will be more directed, broader in scope, and more inclusive than is currently the case.

Briefly summarized, the Subcommittee unanimously recommends the following:

Recommendation 1

The Law Society should endorse a statement of general principles and minimum expectations for post-call education.

The statement proposed by the Subcommittee

- sets out the central importance of ongoing education;
- states that a conscious commitment is required by all members of the profession to such ongoing education; and

- articulates the importance of the Law Society, the CBAO, the law schools, county and district law associations, other providers of continuing legal education, the County and District Law Presidents' Association, providers of library resources, and members of the profession collaborating to ensure the development of educational policies, opportunities, and programs.

Recommendation 2

The Law Society should initiate and co-ordinate a plan for enhancing learning supports available to the profession.

The goals of the plan would be to

- expand and enhance educational delivery methods to make education more accessible, useful, inexpensive, and local;
- expand the development of CLE programming at the county and district level so that more CLE is locally created and produced;
- analyze CLE content goals, program and course design, and presentation issues to ensure that education providers are meeting lawyers' needs;
- improve and expand the range and scope of continuing legal education programs and courses to meet lawyers' needs;
- enhance written learning supports to meet lawyers' needs;
- investigate mechanisms designed to reduce the cost of continuing legal education and to provide incentives for attendance; and
- create mechanisms for long term planning for post-call education.

The report specifies detailed action plans for accomplishing these goals.

Recommendation 3

The Law Society should gather meaningful information related to post-call education.

This would include

- requesting that members of the profession outline their continuing learning activities so that more can be learned about the way in which the profession currently pursues post-call learning;
- ensuring that Law Society departments gather information that may be used to assist in designing CLE programs or other learning tools;
- working in co-operation with the Lawyers' Professional Indemnity Company to gather and disseminate information that will assist members in risk avoidance and in enhancing their competence; and
- encouraging providers of CLE to develop uniform statistic-gathering methods so that some information can be shared by all providers to enhance the delivery of programs.

On the fourth recommendation, which relates to mandatory continuing legal education, the Subcommittee is not unanimous, and has agreed to provide Convocation with two possible options on the issue of the introduction of MCLE.

Recommendation 4

Option 1 (endorsed by a narrow majority of the Subcommittee) recommends that the Law Society defer a decision on the introduction of mandatory continuing legal education until the fall of 1998. During the period preceding that date initiatives set out in the action plans under Recommendations 1, 2, and 3 should be investigated, pursued, and reported on.

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Option 2 recommends that the Law Society approve the introduction of mandatory continuing legal education with implementation of such program to occur in January 1999. During the period preceding that date initiatives set out in the action plans under Recommendations 1, 2, and 3 should be investigated, pursued, and reported on. In addition, the administrative structure for MCLE should be fully determined, communicated to the profession, and made ready for introduction.

If Option 2 Recommending The Approval Of MCLE Is Accepted, What MCLE Model Is Recommended?

In keeping with its mandate to make recommendations on what kind of model would be designed if MCLE were approved, the Subcommittee report includes a possible MCLE model and a projected budget. The Subcommittee believes that an MCLE model must be considered in conjunction with, and as a piece of, all the recommendations and action plans that the Subcommittee has developed.

The possible model and the reasons for the Subcommittee's choice of certain features are described in detail in the report, but briefly summarized the possible model contains the following main components:

- Lawyers would participate in 30 credit hours of approved CLE programming or activities over a three year reporting cycle (an average of 10 hours per year). Such approved activities could include, among other things, participation in lecture or seminar programs, post graduate programs in law, organized discussion groups, and interactive computer programs. A fundamental goal of the MCLE system would be to have such programs and discussion groups available throughout the province.
- Lawyers would be entitled to participate in whatever approved courses and activities they consider most meaningful for their work. In order to be approved, courses or activities would have to include a number of educational features, and applicants seeking approval of a course would be required to demonstrate the extent to which the program content addresses issues of substantive law, procedure, practice management, professional responsibility and ethics, and practice skills.
- In order to be able to monitor the quality of program offerings, approval of courses or activities for MCLE credits would be done on a program by program basis.
- Lawyers would report credits every three years by way of a signed statement on a simple form. Lawyers would receive a reminder 120 days prior to their reporting deadline. If a lawyer did not comply with the requirement or meet the reporting deadline the lawyer would receive a further reminder and be given 60 days within which to comply, failing which the lawyer would be suspended until the MCLE requirement is met.
- An administrative structure would be put into place to facilitate the steps leading to implementation of an MCLE system and to administer the system once implementation began.
- The MCLE system would be reviewed at the conclusion of the first three year reporting cycle to evaluate its effectiveness, cost to members of both programs and administration, and assessment of improvements to the system.

I
INTRODUCTION

1. The Mandatory Continuing Legal Education ("MCLE") Subcommittee was established in October 1994 with Bencher Susan Elliott as its Chair. Upon her election as Treasurer, Benchers Larry Banack and Derry Millar became co-Chairs of the Subcommittee.
2. Representation on the Subcommittee has consisted of benchers, individual practitioners, members from the Canadian Bar Association-Ontario, the County and District Law Presidents' Association, the Advocates' Society, the County of York Law Association, Insight Seminars, and members of Law Society staff who deal on a daily basis with competency-related matters. Some Subcommittee members have participated throughout the term of the Subcommittee; others participated only in earlier or later stages of the process.
3. Bencher participants have included former or current benchers Nancy Backhouse, Ian Blue, Lloyd Brennan, Colin Campbell, Philip Epstein, Stephen Goudge, Vern Krishna, Stuart Thom, and lay bencher members Netty Graham and Hope Sealy. Members on the Subcommittee from the various constituencies have included Carol Albert, Juliet Baldock, Marc Bode, Richard Bogoroch, Peter Bourque, Brian Bucknall, Janne Burton, Alexandra Chyczij, Brenda Duncan, Laurel Evans, Michael Head, Glen Howell, Lynn Kaminsky, Keith Landy, Garth Manning, Heather McArthur, Sue McCaffrey, John McKay, Diana Miles, Frank Moskoff, Greg Mulligan, Mohan Prabhu, Patricia Rogerson, Robert Ross, Bill Simpson, Bill Taggart, Alan Treleaven, Paul Truster, and Kathleen Will. Sophia Spurdakos is the Subcommittee's Project Director.
4. The questions the Subcommittee must answer to fulfil its mandate are:
 - How could MCLE be delivered most effectively and at a reasonable cost?
 - If MCLE were to be introduced, what kind of program would be designed?
 - Should MCLE be introduced?
5. This is the third report prepared by the MCLE Subcommittee. Benchers have received copies of the first and second reports of the Subcommittee, which are part of the foundation upon which this third report is built.
 - The first report, entitled "Discussion Paper", was approved by Convocation in April 1995 for circulation to the profession. The paper contained a discussion of the Subcommittee's work and analysis to that point, described the work the Subcommittee proposed to do in the months to come, and explained why the Subcommittee considered consultation with the profession to be so important.
 - The second report, entitled "MCLE Subcommittee Consultation Report", was written in November 1995 at the conclusion of the two month consultation process throughout Ontario. It described what the consultation process revealed about lawyers' attitudes to learning, the role of continuing legal education in professional development, the need for improvements to delivery and cost of CLE, and attitudes to mandatory continuing education.
6. At meetings on December 1, 1995, February 6, 1996, and February 28, 1996 the Subcommittee developed its recommendations. The profession was encouraged to read the Subcommittee's report and provide comments on it. Appendix E to this report sets out the nature of the comments received.

7. The purpose of the Subcommittee's report is to provide its recommendations to Convocation with "action plans" on how those recommendations may be accomplished. The recommendations reflect the Subcommittee's view that mandatory education is only one piece of the discussion on enhancing competence through learning. The Subcommittee has analyzed what learning is to the professional, how it is linked to competence, and how supports for learning should be identified and realized.
8. The Subcommittee intends its recommendations to be a guide to the enhancement of continued learning, beyond just the question of whether post-call education should be mandatory in Ontario. Raising important issues about a vision for professional learning fits appropriately with the discussions the Law Society is currently having, and will continue to have, about its mandate and priorities. In addition, the discussion of these issues is responsive to the questions and concerns expressed by those who participated in the consultation meetings throughout the province.

II

CONSIDERATIONS UNDERLYING THE SUBCOMMITTEE RECOMMENDATIONS

Professional Learning and the Pursuit of Competence

1. Lawyers must be committed to continuous learning. Specialized knowledge, ethical values, and skills are the foundation of the profession, and their maintenance and enhancement is critical to the ability of members to serve the public effectively and succeed professionally. While ongoing education is not the only factor that plays a role in the attainment and maintenance of competence, it is clearly a critical component that should be integral to the definition of what it is to be a lawyer.²
2. Acceptance of the need for continuous professional development and education should be accompanied by a coherent approach to ensuring that ongoing learning is an essential component of the professional life of lawyers.
3. Rule 2 of the Rules of Professional Conduct, which govern the profession, requires lawyers "to be competent to perform any legal services undertaken on the client's behalf". Commentary 5 to the Rule includes an exhortation to "keep abreast of developments in the branches of law wherein the lawyer's practice lies by engaging in continuing study and education".
4. The Rules therefore make the link between learning and competence, but do not articulate clearly a standard and means by which to foster and accomplish the link.

¹A complete bibliography of books, articles, and information reviewed by the Subcommittee is available from the Subcommittee's Project Director on request.

² During the consultation process Subcommittee members heard a number of comments that the practice of law is best defined as a business, not a profession. For some, this debate is a critical one that in their view reflects the need for establishing new priorities for the Law Society and a shift in its approach to its members. The Subcommittee believes, however, that regardless of which definition members believe more accurately describes the bar, the need for meaningful ongoing education and professional development is clear under both. This belief was echoed by those who attended the consultation meetings.

Challenges to Professional Learning

1. Lawyers must undertake professional learning in the face of many daily pressures. Throughout the consultation process lawyers spoke about striving to maintain competence in the face of
 - difficult economic times, in which clients demand much more for much less remuneration to the lawyer;
 - a steep increase in the fixed costs of doing business;
 - uneven access to library facilities and other learning supports, including CLE programming;
 - a dramatic rise in competition for business among practitioners to the point that, in some instances, it threatens competence;
 - external factors beyond the control of the practitioner impinging on economic remuneration;
 - low morale among members of the profession;
 - standards of practice that appear to many to be set without regard to different practice settings and realities in different parts of the province;
 - rapidly changing law;
 - time pressures that seem only to grow;
 - a profession that is divided and therefore losing its ability to address problems coherently as one; and
 - a steady stream of lawyers entering practice in a time of dwindling work.
2. Lawyers expressed the belief that they must accept responsibility for their own competence. At the same time, however, they articulated a desire for and some expectation of educational and other mechanisms that would assist them in fulfilling their goals and ensuring that pressures described above do not create barriers to their ongoing professional development and education.

The Stake of the Profession as a Whole in Professional Learning

1. Collectively, members of the profession should have an interest and a stake both in the commitment individual lawyers make to learning and in the articulation of goals and supports that will enhance the profession's ability to pursue its competence.
2. At the consultation meetings this view was challenged by some members of the profession who argued that there is no profession-wide stake in the commitment to learning. In their view if particular lawyers do not have self-discipline and the commitment to competence, the "market" will take care of those who fall below a certain standard, by driving them out of business.
3. The analogy to business is an imperfect one for a number of reasons.
 - Lawyers profess expertise upon which the public is entitled to rely. Waiting for the market to drive an incompetent lawyer out of business is an unacceptable burden to place upon the public.
 - The public does not simply look at lawyers as individual producers of a product, but also as an identifiable group. As a result the public's perception of the profession may be adversely affected by incompetence of individual lawyers.
 - The profession defines itself as an identifiable group whose unique characteristics justify it being self-regulating.
 - One of the hallmarks of professional self-regulation has always been the belief that those in the profession understand best the appropriate education for members and are in the best position to determine standards upon which the public can rely.

- The ability of individual lawyers to perform their work efficiently and serve their clients well is directly affected by the competence, including the level of learning, of the lawyers with whom they deal.
 - One of the traditional arguments upon which self-regulation is based is that the legal profession is best able to protect the public from the intrusion of the state. Poor performance by individual lawyers weakens the ability of the profession to fulfil that important role.
4. Moreover, the "market" argument touches on only one dimension of the commitment to learning, namely the avoidance of poor performance and the falling below a minimum level of acceptable behaviour. In fact there is the equally important dimension of the profession seeking to achieve collective excellence using continuous education as one means to the end. There are a number of groups with an interest in this pursuit of excellence. These include the Law Society, the members of the profession, the Canadian Bar Association - Ontario, the law schools, county and district law associations, other continuing legal education providers, the County and District Law Presidents' Association, providers of library facilities and resources, and the public.
5. Suggestions heard throughout the consultation process for improved library facilities and mentoring systems, better written educational materials, more continuing legal education programs, services at a lower cost, and incentives to attend programs also presuppose a collective stake in the learning process. Otherwise, no expectation of institutional support for post-call learning would exist.

The Role of The Law Society in Post-Call Education

1. The Law Society must be concerned with the continuing learning of its members for at least four reasons.
- Both from the perspective of protecting the public interest and of fostering a positive image of the profession, the Law Society has an obligation to ensure high professional standards.
 - The Law Society has a responsibility to the members it regulates to provide guidance and resources for professional development and education.
 - The Law Society must deal with the consequences of failures or gaps in learning or professional attitudes each time it handles a complaint or considers errors and omissions issues.
 - There are important educational initiatives that the Law Society may be in the best position to either promote, foster, co-ordinate, or undertake.
2. The Law Society already accepts responsibility for involvement in the learning of the profession as evidenced by the many programs already in place whose goal is to foster this learning process.³ What is missing from these initiatives is an overall unifying thread. Despite the generally shared pursuit of competence, there is no unifying theory behind the various approaches, no overall articulated goal or approach, and no analysis of whom the programs are intended to serve and whether there are gaps in service.

³ The Bar Admission Course and the articling process focus on the pre-call obligations of the Society. The other programs or services relate to post-call membership. These include the Practice Advisory Service, the Start-up Workshops, bulletins from the Lawyers' Professional Indemnity Company (LPIC) that are sent to the profession, aspects of the work of the Professional Standards Department, including the Practice Review program, the Great Library at Osgoode Hall and the county libraries, the Ontario Reports, the certification program, the Continuing Legal Education Department programs and publications, and most recently, the institution of re-qualification requirements.

3. The lack of a Law Society vision for post-call learning limits the Society's ability to guide the profession in its pursuit of competence. Without an articulated and widely accepted vision of what learning is and how it can be supported, the Law Society cannot truly promote appropriate standards of performance for the profession. By involving itself in the enhancement of learning supports the Law Society could also provide a level of positive interaction between it and its members that befits a self-regulating profession.
4. To analyze the issue of the Law Society's role in post-call education only in terms of whether it should create a requirement for mandatory continuing education is too limiting. There are many possible means by which the Law Society can play a role in education. The role it plays can range from simply setting standards and minimum expectations, to providing supports for enhanced learning, to mandating some minimum level of post-call education, to delivering education.
5. What is critical is that the Law Society fulfil a strong guiding role in the development of a meaningful plan for post-call education.

Defining Continuing Legal Education

1. Some participants at the consultation meetings expressed the view that the consultation process seemed to be focused primarily on continuing legal education programs rather than on the broader definition of education, which would include experience, the exchange of ideas with colleagues, self-directed reading, and personal research. The implication of many of the remarks was that although continuing legal education programs and courses have an important role to play in enhancing competence, they are not the only part of the professional learning process worthy of institutional attention.
2. This view is extremely important because it raises the question of whether CLE providers and the Law Society generally have been developing a comprehensive enough approach to continuing education. Certainly the Subcommittee's sense that a consideration of supports for learning would include a discussion of libraries, mentoring, and written learning tools, as well as live programming, was confirmed in the consultation process.
3. At the same time the Subcommittee believes that lawyers accept the existence of a link between CLE programming and the enhancement of competence. For most people the strength of that link is largely determined by the quality and relevance of the programs.
4. Continuing legal education therefore encompasses both formal learning by lawyers through participation in continuing legal education programs of some type and the informal or private learning of lawyers through research, reading, mentoring, interacting with individual colleagues, and learning from experience.

Supports for Enhanced Continuing Legal Education

1. It is essential that serious efforts to enhance learning supports for the profession be made by all those groups with an interest in post-call learning. There must be an ongoing assessment of needs, and a commitment by all interested parties to create the framework for supports and their implementation.

2. A Subcommittee focus has been on the ways and means to enhance the delivery and creation of educational tools and resources for the profession in order to improve the means available to the profession to enhance and maintain competence. Mandatory education is one means by which the Law Society could seek to enhance learning supports, but it is only one of many possible means.
3. Consideration of four factors - time, content of CLE programs and materials, delivery of educational programs and learning tools, and cost - are essential to an understanding of the current level of learning supports in Ontario, gaps in delivery of education, unevenness of access to education, and possible shifts in emphasis that might be appropriate if a meaningful vision for professional education is to be implemented.⁴ These factors must be considered in the design, evaluation, and re-evaluation of the quality, accessibility, and relevance of learning supports.⁵
4. Some of the problems and barriers the profession currently faces can be resolved or ameliorated through learning supports but for this to happen much greater attention must be paid to educational goals, program design, and the needs of all categories of lawyers.

The MCLE Debate⁶

1. On the issue of whether MCLE is, in principle, a valid initiative, the Subcommittee is satisfied that the nature of discussions has been similar in all the jurisdictions the Subcommittee researched that have considered MCLE. To some degree, both in other jurisdictions and in Ontario, the MCLE debate is based on different views
 - of the role of a governing body in a self-regulating profession;
 - on what goals such an initiative must be based in order to justify its existence; and
 - on the degree of "evidence" necessary to demonstrate that such an initiative would be effective.
2. Added to the Ontario debate on the principle of MCLE are issues related to
 - the economic climate, including its impact on the practice of law;
 - the Law Society's involvement; and
 - delivery and cost issues.

⁴ The November 1995 MCLE Consultation Report discusses the impact of time, content, delivery, and cost considerations on the learning environment, at pp. 11-30.

⁵ In considering how to integrate these four factors into the design of various learning supports a series of questions might be asked:

- What end(s) does a given learning support serve?
- Which of the four factors does it address, and should it be addressing the factors it currently does not?
- On whose shoulders should primary responsibility for ensuring the existence of the learning support lie?
- If a learning support does not currently exist, why not?
- How can the learning support be designed to meet needs and take into account the factors discussed above?

⁶ The Subcommittee is satisfied that in the course of its discussions and research and during the consultation process all the significant issues related to the pros and cons of introducing mandatory education have been canvassed. (See the bibliography, available from the Subcommittee's Project Director on request.)

In Principle

1. Those who favour the introduction of MCLE do so primarily on the following analysis:
 - Professionalism requires that the profession maintain and enhance its competence through, among other things, a collective commitment to education. It is insufficient for a self-regulating profession to have no further educational requirement beyond the call to the bar. A profession may use a number of means to ensure that its members continue to maintain the expertise necessary for a professional. These may include practice inspection or perhaps even examinations at regular intervals in a professional's career. A mandated minimum requirement for continuing education reflects a balanced approach between intensive regulation and a completely hands off approach to promoting the competence of the profession. While many lawyers maintain their currency without the presence of a mandatory scheme, the pressures of practice and time constraints do produce barriers to engaging in continuing learning.
 - A requirement to attend CLE programs serves as a reminder to the profession to continue its education and, as well, provides a needed opportunity to learn by interacting with other professionals. It may reduce the isolation lawyers feel and it may enhance public perception of the profession. It is the responsibility of the governing body to oversee a collective commitment to education.
 - Education through CLE programs cannot help but enhance the competence of the profession. This kind of requirement is not intended to replace the other forms of learning in which people engage, but to supplement them.
 - The negative emphasis on the "mandatory" feature is misplaced. Much of what lawyers do is mandated and otherwise regulated. It is not an insult to say that there will be a minimum commitment to formal continuing education by all lawyers. In a post-call learning environment in which learning supports are well developed, broadly based, diverse in content, and reasonably priced, a minimum learning requirement should fit without controversy into the learning culture.
2. Those who oppose the introduction of MCLE do so primarily on the following analysis:
 - Legal professionals make their living by learning and applying what they learn in serving their clients. Self-directed learning means choosing the most personally satisfying learning approach both in terms of time, cost, delivery method, and content. If lawyers are committed to their profession, they make it their responsibility to remain current. They should not be told how, when, or where to educate themselves.
 - The existence of a self-governing profession does not mean that the governing body must be involved in regulating every aspect of the profession. It should provide necessary supports, but engage in regulatory behaviour only where necessary. For some the benefits of self-regulation have begun to be outweighed by what is perceived as incompatibility with the business necessities of private practice.

- As professionals, lawyers should be trusted to know what they need. It is an insult to mandate education. For those members who do not value their profession or business sufficiently to remain current, forced attendance will have no impact. Attendance without participation is useless, and is in no way proof of learning. More time should be spent focusing on the people who cause the profession problems in complaints and errors and omissions, with programs directed specifically to them.
- The onus should be on those proposing MCLE to demonstrate that there has been a reduction in negligence and complaints against lawyers in jurisdictions that have an MCLE requirement.

Economic Climate

1. For people who are unsure about MCLE or who, in other circumstances, would be in favour of it, the impact of difficult economic times affects their views on the issue. They reason that
 - any new program that has the potential to increase costs of practice, no matter how notionally, increase the size of the bureaucracy, and encroach further on lawyers' time is a matter of concern.
 - either efforts should be made to provide incentives to increase attendance before requiring MCLE, or the lead time to introduction should be very long to allow for economic recovery.
2. For those who oppose MCLE in principle, the nature of the times simply solidifies their view.

The Law Society's Involvement

1. Concern has been expressed over the Law Society's ability to regulate a program such as MCLE efficiently. For those whose view is that the profession is too bureaucratically driven, MCLE is seen as a grab for more bureaucratic power or as a prescription for trouble. Coupled with a concern about the times, some people who are not opposed to MCLE in principle are nonetheless opposed based on these factors. The watchword of these people is "simplify".
2. Those who support MCLE consider that the key is to choose an administrative structure that is simple and not staff intensive, and to monitor it constantly to ensure that those administrative priorities are still in place.

Delivery and Cost

1. The consultation process revealed significant delivery and cost issues. Those in favour of introducing mandatory continuing education express their interpretation of the cost and delivery issues in the following ways:

- While there are a number of learning supports that could be introduced to improve the delivery of education in a voluntary environment, some expectations expressed by the profession for province-wide CLE are unrealistic in a voluntary market. Further, in the current market there are financial disincentives to producing or developing continuing legal education programs outside of Metropolitan Toronto. While these factors should not be the primary reason for introducing a mandatory program, a mandatory program could consider the inclusion of a requirement that the larger providers of continuing education provide programs in locations outside the large metropolitan areas.
 - Local delivery of CLE has not developed as much as could be hoped, despite significant efforts. The introduction of a mandatory requirement could have the effect of increasing the audience that would want locally delivered CLE. This would improve and increase local offerings and the development of the local CLE infrastructure.
 - The number of program offerings and the variety of topics would increase in a mandatory market. With a broader audience it would become more economically feasible to use the new technologies for CLE.
2. Those opposed to MCLE express their views on this point as follows:
- In the face of the need for improvement of delivery mechanisms and the reduction of the cost of CLE, the introduction of a mandatory program is premature.
 - The need to produce programs for 22,000 lawyers could result in a watering down of both quality and diversity in programming. It may be difficult to find sufficient volunteers to participate as speakers or facilitators in programs. Further, with the existence of a captive audience the need to produce interesting programs would be gone.
 - Rather than imposing the program without first clearly articulating its expectations of the profession, the Law Society should make a statement of education policy, provide leadership on the issue, provide attendance incentives, and improve delivery and content.

The Possible Justification for the Requirement of Minimum Mandatory Education

1. The Subcommittee members were asked by many participants in the consultation process about the motivation driving its inquiry. The Subcommittee members have responded that the issue arises in the context of an inquiry into the means by which to maintain and enhance competent performance, not out of a need to deal with a profession whose performance standards are insufficient.

2. For this type of profession-wide initiative to be appropriate, it must be because it is believed it can assist the profession overall and because it is viewed as an important component in the mosaic of learning supports that the Subcommittee has described. As an additional or perhaps included and important goal, such a program may seek to reduce errors and omissions by alerting the profession to risk avoidance issues, but the Subcommittee does not believe the introduction of the program could be justified on the basis that it is a solution to errors and omissions.⁷

III RECOMMENDATIONS

Nature of Recommendations

1. This report makes four recommendations to Convocation, and includes action plans by which to implement the recommendations. Together these represent a blueprint for developing an approach to post-call education that will be more directed, broader in scope, and more inclusive than is currently the case.⁸
2. On the first three recommendations the Subcommittee is unanimous. On the fourth recommendation, which relates to mandatory continuing legal education, the Subcommittee is not unanimous. Recommendation 4 provides two possible options for Convocation to consider. The discussion under Recommendation 4 sets out the analysis of both options.
3. The Subcommittee is unanimous in its view that Recommendations 1, 2, and 3 can be accepted and pursued without recommendation 4. Recommendation 4 would not, however, be meaningful without a commitment to the developmental approach reflected in Recommendations 1, 2, and 3.

RECOMMENDATION 1 (unanimous)

The Law Society should endorse the following general principles and minimum expectations for post-call education:

- *Professional competence is maintained and enhanced by ongoing professional development and education.*
- *The Law Society has an obligation to encourage and monitor professional development and education, and to foster the creation and development of learning supports both in the public and the profession's interest.*

⁷ Based on available information, the Subcommittee agrees there does not appear to be the kind of evidence that could definitely prove that a mandatory continuing legal education scheme would be a solution to the errors and omissions and complaints problems with which the profession is faced. This lack of evidence does not mean that there is no link between education and a reduction in lawyer mistakes, but rather that the link may be difficult to prove. Having said this, however, the Subcommittee believes that an MCLE scheme should not be introduced as the solution to errors and omissions. Not only should MCLE not promise to produce this type of "quick-fix", but no program, no matter how excellent, should hold out the hope of satisfying such an agenda. Jurisdictions that have introduced MCLE have not viewed it as a remedial program with a remedial curriculum. Rather, they have introduced MCLE primarily on the basis that a self-regulating profession should make a demonstrable commitment to ongoing education and that through this policy commitment a profession takes proactive steps to further the enhancement of competency.

⁸Appendix A contains a summary of the action plan deadlines discussed in Recommendations 1, 2, and 3. Appendix B contains a discussion of budgetary considerations for implementing Recommendations 1, 2, and 3.

- *Membership in the legal profession requires a conscious commitment by all members of the profession to ongoing professional development and education and to self-assessment of educational need.*
- *Fulfilment of such a commitment enhances the ability of all members to meet their obligation to the public to provide effective and competent service, to adapt to and function in a changing and challenging environment, and to maintain and enhance their expertise and overall competence.*
- *While members of the profession have individual responsibility for and direction over the conduct of their professional development and education, all members of the profession have a collective interest in this responsibility being fulfilled.*
- *The professional development and education members of the profession undertake should include both informal education through self-study, reading, and research, and more formal education through participation in continuing education programs.*
- *The Law Society, the Canadian Bar Association - Ontario, the law schools, county and district law associations, other continuing legal education providers, the County and District Law Presidents' Association, providers of library resources and facilities, and the members of the profession should collaborate to ensure that the development of educational policies, opportunities, and programs becomes a priority.*

ACTION PLAN

1. *The Law Society should communicate this statement of principles and expectations to the profession, the Canadian Bar Association - Ontario, the law schools, county and district law associations, other continuing legal education providers, the County and Districts' Law Presidents' Association, and providers of library resources and facilities.*
2. *The Law Society should employ a coherent approach to ensure that supports for such professional development and education exist and are developing. Recommendations 2 and 3 of this report provide the blue-print for such a coherent approach.*

DISCUSSION

1. *The articulation of general principles and minimum expectations for post-call education is a necessary first step toward developing a coherent approach to enhancement of learning supports for the profession.*
2. *This statement of principles and expectations emphasizes that ongoing professional development and education must be a central priority for the profession. Clarification of educational goals and enhancement of learning supports will assist members of the profession in overcoming many of the pressures they currently face.*
3. *A conscious commitment to professional development and to self-assessment of need must be integral to lawyers' work. On a daily basis a lawyer must identify the constituent parts of each task. If among the steps necessary to perform the work competently a lawyer identifies the need to know more or perform more efficiently, then the lawyer must identify whether some form of learning can assist in accomplishing the component parts of the task. If so the lawyer should make the commitment to undertake that learning.*

4. The education lawyers undertake should have as its identifiable goal both the maintenance and enhancement of their professional competence. Such competence includes
 - (i) the acquisition and updating of substantive knowledge relevant to lawyers' areas of work;
 - (ii) the acquisition and enhancement of skills necessary to perform effectively; and
 - (iii) the ability to demonstrate sound judgment, ethical behaviour, professional responsibility and attitudes, and effective practice management in performing legal services.
5. For professional development and education to be meaningful, it must encompass the broadest range of approaches to learning. Experiential learning, self-study, research, and one-on-one dialogue between colleagues are critical components of ongoing professional learning. At the same time participation in more formal education forums such as CLE programs, seminars, and discussion groups are an important part of professional development and education.
6. If members of the profession are expected to identify and assess their learning needs, there must be a variety of appropriate learning supports available to satisfy those needs and to make it possible for members of the profession to meet the commitment to professional development and education. It should not be assumed that the development of these supports will happen without some direction and vision, some guidance, and some institutional commitment to enhancing them.

⁹Enhancement of learning supports should focus on a wide variety of means by which lawyers meet learning needs. These include:

Continuing Legal Education Programs: This method of learning involves a public learning environment in which there is a pre-determined topic or learning approach, a specific objective, and a group dynamic. Such programming can and should encompass a wide range of structures including the discussion group, both live and through computer or interactive video or audio, the seminar program, the skills workshop, or the lecture program. It could include a brief time commitment or the extended time commitment that is required to undertake a post-graduate law degree program.

Teaching, Writing: This refers to legal writing and teaching that require the lawyer to gather facts, synthesize arguments, analyze positions, disseminate legal information, and respond to questions.

Reading, Research, Analysis: This includes reading case law, journals, legal periodicals, continuing legal education products, bulletins, and other written legal materials, as well as viewing or listening to legal video or audio tapes both for general improvement of knowledge and skills and with intent to apply such research to the resolution of a problem or issue. Research also includes identifying the issues, recognizing and asking the relevant questions, contacting people with appropriate expertise, and planning a course of action.

Mentoring: This is the process by which junior members of the bar seek the advice and guidance of more senior members of the bar. It can be informal or structured. The goal is to provide less experienced members of the bar with access to the skills and judgment of more senior members. The senior member's professional development should also be enhanced by the process, particularly if some structure is incorporated into the process.

Dialogue between colleagues: This is the process by which colleagues engage in an exchange of ideas and advice on an ad hoc basis.

Experiential learning: This is the process by which lawyers apply knowledge to real situations, learn from that application and its consequences, and adapt their behaviour to benefit from the experience.

7. The Law Society must provide leadership in encouraging and assisting in the provision of such supports from which the profession can benefit in its pursuit of learning. In partnership with the Canadian Bar Association - Ontario, law schools, other continuing legal education providers, law associations representing various constituencies, the County and District Law Presidents' Association, and members of the profession, the Law Society should ensure that the momentum that has emerged from the MCLE Subcommittee consultation process is not lost.

RECOMMENDATION 2 (unanimous)

The Law Society¹⁰ should initiate and co-ordinate an action plan for enhancing learning supports available to the profession. The goals of the plan should be to:

- *expand and enhance educational delivery methods to make education more accessible, useful, cost effective, and local;*
- *expand the development of CLE programming at the county and district level so that more CLE is locally created and produced;*
- *analyze CLE content goals, program and course design, and presentation issues to ensure that education providers are meeting the needs of the members of the profession;*
- *improve and expand the range of continuing legal education programs and courses to meet the needs of members of the profession;¹¹*
- *enhance written learning supports to meet needs of the members of the profession;*
- *investigate mechanisms designed to reduce the cost of continuing legal education and to provide incentives for attendance; and*
- *create mechanisms for long term planning for post-call education.*

ACTION PLAN

1) Enhanced Creation and Delivery of Continuing Legal Education Programs

The Law Society should

- a) investigate the development of annual CLE institutes in locations around the province. The possibility of such a province-wide approach to local*

¹⁰ For the purpose of accomplishing the broad goals of this recommendation and Recommendation 3 the Subcommittee considers the "Law Society" to mean the governing body as a whole, but assumes that there will continue to be a benchers committee such as the former Legal Education Committee to whom reports would be made on the progress of the action plans. Where, however, the action plan refers to specific investigation of ideas, initiatives designed to improve programming, development of ideas, enhancement of learning supports, and consultation with outside groups, unless otherwise stated, the Subcommittee assumes the existence of a Department of Education and other existing Law Society departments or staff that would undertake the initial "hands-on" work. See Appendix B for budgetary considerations affecting Recommendations 1, 2, and 3.

¹¹ It is critical that part of this initiative be to ensure that CLE is responsive to the needs of all categories of lawyers, not just those in private practice, and not just those who practice in the most common subject areas. Content, geographic, language, cost, and delivery needs must all be considered.

CLE was discussed throughout the consultation process.¹² Such investigation should be reported on by March 1997 including ideas for a possible pilot project to be implemented before the end of 1997.

- b) determine local law association interest in the development of both "teacher training" materials and program outlines intended as the framework for locally developed continuing legal education programs. In the event of reasonable interest, investigate the development of such initiatives. The assessment of interest should be completed by February 1997 and any investigation should be completed by May 1997.¹³
- c) develop initiatives to broaden the base of volunteers who teach at live programs both within and outside Toronto. A report on the initiatives proposed or taken should be completed by June 1997.
- d) re-assess the way in which videotape replays are produced, the use to which videotape replays are put, the availability of such replays, and their cost to the producer and to the user. Report on ways in which to improve this learning support by March 1997.¹⁴
- e) produce a report summarizing the MCLE Subcommittee's research on delivery mechanisms including:
 - identifying delivery mechanisms
 - listing businesses involved in providing education technology
 - providing information on cost considerations for each technology
 - suggesting what types of education are best served by which technologies
 - providing ideas for possible pilot projects using technology

This report should be completed by December 1996 and be made available to interested providers of continuing legal education and learning supports, and for further discussions under (f) below.

- f) take steps by the end of 1997 to expand the delivery and production of continuing legal education programs and minimize the cost of CLE throughout the province. Considerations of cost should include

¹² This investigation would be most effectively done by encouraging CLE providers who have demonstrated interest in such an initiative, local law associations who are interested, and the Lawyers' Professional Indemnity Company (LPIC) to work together. This group should report specifically on goals for such an initiative, interest in such an initiative, a suggested blueprint, cost considerations, use of technology, and a time line for a pilot project. LPIC has expressed plans to put on risk avoidance seminars throughout the province on an annual basis. Efforts should be made to co-ordinate educational programs where possible.

¹³ Locally developed live CLE is a well-developed tradition in some counties, such as Ottawa-Carleton, Hamilton-Wentworth, and Thunder Bay. Local CLE has developed for a number of reasons, cost considerations and distance to Toronto being two of the primary ones. The development tends to coincide with there being enough lawyers to provide an audience, as well as being willing to coordinate and recruit speakers, identify program topics, and, on occasion, write papers. The county law librarian may play an active part in this coordination. Discussions in these and other counties suggest that often they want assistance in offering CLE or at least in enhancing the structure for local development. The way in which such assistance or development can be accomplished should be discussed with CLE providers, law associations, and lawyers who attend CLE.

¹⁴ Pages 18-20 of the MCLE Consultation Report list specific concerns with videotape replays. The best approach to this issue would be for providers and consumers of videotape CLE to explore areas of concern as revealed in the consultation process. Providers would then need to consider whether there are aspects that can be more effectively approached through joint effort. Then, whether collectively or individually, providers could take steps to make improvements.

- direct cost to the participants
 - incidental costs (ie. transportation)
 - lost opportunity costs (lost office time)
- g) in consultation with the Canadian Bar Association - Ontario, the County and District Law Presidents' Association, county and district law associations, and other interested groups consider whether mechanisms that currently exist to provide mentoring by senior lawyers to more junior ones are sufficient, and provide the membership with information on mentoring resources available. Such information and any suggestions for improvement should be reported upon by March 1997.
- h) encourage all providers of continuing legal education, whether it be the CBAO, the Advocates' Society, the law schools, or other providers, to participate in a similar assessment of their programming and learning supports and the means by which they can be enhanced, provided at a reasonable cost, and with a view to province-wide delivery. Where possible obtain input from providers as to their approaches, to be incorporated into reports.
- 2) Analysis of CLE Content Goals, Program Design, and Presentation Issues

The Law Society should

- a) address suggestions made during the MCLE consultation process for improving program content, program design, and program presentation to meet the changing needs and expectations of all categories of lawyers. This process should consider how to address the time, content, delivery, and cost issues identified in the consultation report, as well as identifying how programs can alleviate the barriers to learning discussed on pages 3-4 of this report. A report on responses to those suggestions should be prepared by May 1997.
- b) encourage all providers of continuing education to undertake a similar assessment to that addressed in (a) and include any input from providers in the May 1997 report.¹⁵

3) Enhancement of Written Learning Supports¹⁶

The Law Society should

- a) investigate the suggestion made throughout the consultation process that it produce a practice alert and management publication whose goals would be to inform the profession on practice related issues, risk avoidance, ethical issues, up and coming legislation, available research tools,

¹⁵ This part of the action plan does not suggest that providers do not already undertake analysis of content and presentation issues. Rather it is aimed at responding to the lawyers' comments and suggestions that emerged during the consultation process. Providers need to systematically consider those suggestions not only on the basis of whether individual suggestions are feasible, but what they signify about the needs and discontent of lawyers who are the potential and actual CLE audience. Perhaps providers need to be more clear in communicating (a) the extent to which a design integrates knowledge, skills and attitudes; (b) to what practical use the content may be put after the program; (c) whether greater use could be made of precedents and checklists as supporting material; (d) whether the content could assist in practice management; (e) whether the content is relevant to those working throughout the province; (f) whether the content is best communicated through the presentation method chosen; (g) whether panels are being put to the best use and whether they are representative of the lawyers taking part in the program; (h) what specific role a question period will play in a live program; and (i) whether every written paper must be accompanied by a live speaker if the speaker intends to do no more than read the paper.

¹⁶ Written learning supports must be available in printed and electronic form.

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learning opportunities, practice management issues, and other related matters.¹⁷ Such investigation should be completed and a feasibility report prepared by June 1997. The Law Society should make the development of such a practice alert and management publication a high priority.

- b) investigate the development of enhanced publications-based continuing legal education. Such investigation should be completed and a feasibility report prepared by June 1997.¹⁸*
- c) ensure that all county libraries have current and complete versions of the Bar Admission Course Reference Materials as they become available. The Department of Education should be responsible for ensuring on an annual basis that such materials are sent to the libraries. The Law Society should communicate immediately with all county libraries to ensure that current materials are in each library.¹⁹*
- d) analyze the basis upon which Law Society videotapes of continuing legal education programs are currently sent to county libraries, consider the effectiveness of the system, and communicate such policy and any changes immediately to all libraries and to the profession.*
- e) consult with the Libraries Committee of the County and District Law Presidents' Association to ensure that their research into the enhancement of library facilities and improvement of the role of libraries in education is encouraged. Report to the profession on the progress and outcome of the Committee's work.²⁰*

¹⁷ The Law Society publishes the "Advisor", which contains similar information, but participants appear to want something more ambitious, more frequently published, and with a broader scope than just the "alert" component. Such a publication could draw on the expertise of and information available from Law Society departments and other organizations. The investigation should articulate a blueprint for such a publication and the specific goals of such a publication, and discuss the necessary allocation of staff resources, means for ensuring the publication is relevant to lawyers' needs province-wide, and the likely costs of such a publication both in printed and electronic form. Some Law Society staff have been investigating such a project and should continue that process.

¹⁸ Among any other initiatives the report considers, it should discuss the feasibility of:

- producing updates to the Bar Admission Course Reference Materials rather than publication of completely new materials each year;
- producing annual published lecture materials in a wide variety of practice areas focusing on major developments; and
- creating home study materials with self-assessment packages.

¹⁹ A number of participants at consultation meetings said that Bar Admission Course Reference materials were not always placed in county libraries on an annual basis.

²⁰ Among other things the Libraries Committee is conducting a computer usage and needs pilot project in Northumberland, Peterborough, Hastings, Frontenac, and Simcoe counties. The goals of this project and its results should be reported to the profession.

- f) *re-consider and articulate the various purposes for which written CLE materials are produced, assess what continuing uses the members of the profession have for them and whether current formats meet lawyers' needs. Consider the general use to which checklists and precedents can be put.²¹ Techniques for improving written materials should be reported on by May 1997.*
- g) *investigate and develop a plan and pricing approach to selling written program materials on a paper by paper basis (printed or electronic form). Feasibility of such a plan should be reported upon by February 1997.*
- h) *analyze means by which notification to the profession of continuing legal education program dates and content can be improved. There should be a report by March 1997.²²*
- i) *encourage all providers of continuing legal education to participate in a similar assessment of their written learning supports and the means by which they can be enhanced, provided at a reasonable cost, and with a view to province-wide delivery. Where possible seek input from providers as to their approaches and incorporate comments into reports.*
- j) *by May 1997 make recommendations on how written learning support initiatives should be prioritized with specific consideration of consumer need, cost, and relevance.*

4) *Cost and Incentive Issues*

The Law Society should

- a) *in consultation with LPIC pursue the development of a system of credits that may be applied by members to reduce their LPIC premiums. LPIC has recently expressed interest in providing some type of continuing premium credit to practitioners who provide acceptable evidence of continuing education. It is important to note that LPIC is interested in encouraging such credits not just for education focused on loss prevention, but also for participation in CLE programs that have the goal of assisting the profession to maintain currency and generally enhance competence. LPIC is interested in developing a system of accrediting the various types of learning programs so as to be able to evaluate for what credits members would be eligible. This project should be a high priority and further discussions and involvement with LPIC on this project should continue.*

²¹ Some CLE programming is criticized for insufficient relevance. Participants in consultation meetings stated that some programs simply rehash the same content, packaged in different ways. "Relevant" is in this context frequently synonymous with "practical". Lawyers who attend CLE programs want the material to be immediately useful in their practices and to contain reference tools for use after the program (eg. checklists and precedents). That view was reiterated again and again in meetings. In that same vein there were suggestions that more hypotheticals be included in program content and more problem solving seminars or segments be offered.

²² The bar is inundated with flyers for CLE programming. There is often no real way to distinguish whether similar sounding programs do, in fact, address different levels of expertise and different content, or provide a distinct delivery method that is more attractive than another. Bombarded by CLE flyers, and with no means for judging their import, practitioners at the consultation meetings said they have begun simply throwing out the flyers unread because they do not have the time to sort through them. A related difficulty identified is that there is inconsistent notice of program dates. As a result lawyers do not always have enough lead time to plan to attend. This initiative should not be seen as interfering with providers' individual development of marketing techniques. Rather it should be seen as a way that all providers, through a creative approach to marketing, might regain the attention of some consumers who have "tuned out" due to information overload.

- b) ensure that each step set out in the Subcommittee recommendations and action plans includes a cost analysis both to providers and to the profession, with an analysis of means by which to reduce costs of learning supports to the profession.

5) Long Term Planning Goals

The Law Society should

- a) as part of its evaluation of its role in education, determine whether it is prepared to allocate resources, either financial or human, to the development of local learning supports, particularly where they may not be revenue generating. Such determination is important to the manner in which MCLE Subcommittee recommendations are considered, and should be specifically addressed.
- b) assemble an advisory group whose short term goal is to define planning needs for post-call education and the means to meet those needs, and whose long term goal is to oversee their realization. Such advisory group should be appointed by February 1997 and should report on its short term goal by July 1997.²³
- c) evaluate the progress of the "action plans" set out in these recommendations at least twice a year, and where necessary take steps to guide the process where there is insufficient progress.

DISCUSSION

1. The steps in this action plan reflect in large measure an effort to respond to the concerns and learning needs identified by lawyers, particularly during the MCLE consultation process. This is by no means the first time that recommendations for enhancement of learning have been made, but it may be one of the few times that the profession has been actively involved in defining its own needs.
2. There are a number of groups who have an interest in the development of an action plan for education. Depending upon the particular constituency they represent, however, they may focus their interest on a particular aspect of the issues. Those who are interested in the enhancement of library resources, for example, may have an interest in how live continuing legal education programs develop, but only as an adjunct to their specific focus. Similarly, the various groups or organizations may have varying abilities to devote time to the attainment of province-wide educational goals.
3. To the extent that the Law Society accepts the need for enhancement of learning supports, the Society is in the best position to initiate and co-ordinate steps for change. It is unrealistic to expect that individual providers will assume responsibility for this policy task and action plan, while at the same time being in competition with one another and planning the individual programs.

²³ If the goal of CLE is to enhance competency, and competency consists of the ability to integrate knowledge, skills, and professional attitudes into effective performance, then all CLE programming should seek to enhance that competency by addressing the acquisition and maintenance of components of competency. In defining planning needs, the advisory group should consider among other things its possible role in providing guidelines to providers, enhancing curriculum planning in continuing legal education, ensuring province-wide delivery of continuing legal education, ensuring the ongoing development of written learning supports, and participating in the ongoing improvement of the means by which "competent practice" can be systematically explored and explained for the benefit of the profession.

4. This is not to suggest that the design, execution, delivery, and responsibility for post-call education should or could rest solely with the Law Society. On the contrary, true progress cannot happen unless everyone with an interest in effective education can be persuaded that new approaches must be embraced and the lawyers who use educational products want new approaches to learning.²⁴
5. It is also important to note that the action plans are gradual. What this means is that the plans envision an investigatory stage, a proposal stage, a cost assessment stage, and a possible implementation goal. Commitment to the action plans overall does not mean that there is no further assessment of feasibility. On the contrary, these recommendations and action plans must not be taken to mean that coherence entails speed. What coherence must mean is planning and commitment to long term development.

RECOMMENDATION 3 (unanimous)

The Law Society should gather meaningful information related to post-call learning.

ACTION PLAN

The Law Society should

- a) *immediately revise the "Notice of Annual Membership Fee" form to include a section requesting members of the profession to describe their continuing learning activities, both self-directed private learning and through participation in more formal CLE programs and activities.*²⁵
- b) *ensure that one of the priorities of its Chief Information Officer is to develop information systems that can be used to support the enhancement of learning tools. As better information systems become part of the Law Society structure, the multiple uses to which information can be put must be considered.*
- c) *work in co-operation with LPIC in the collection and dissemination of information that will assist members in risk avoidance and in enhancing their competence.*²⁶
- d) *encourage providers of continuing legal education programs to develop some uniform statistic-gathering measures so that information can be shared by all providers to enhance the delivery of programs.*

²⁴ The commitment to this action plan would entail regular reporting to the appropriate bench committee and to the profession to ensure that the action plans and their targets are being met. Some of these action plans involve continuing with initiatives that are already under way, others require a commitment from a number of providers to work together, and some lend themselves to an allocation of current Law Society staff to specific projects. Others may lend themselves to using additional resources. In the recommendations that entail prioritizing and cost considerations, such resource issues must be factored into the decision making process.

²⁵ The goal of such description would be to enhance understanding of education habits and approaches throughout the province. The Subcommittee is aware that privacy issues should be addressed in designing the section and handling the information received, and that the specific objectives should be clearly identified and communicated.

²⁶ LPIC has recently adopted the American Bar Association system of codifying areas of loss. This will provide a broader statistical base for analyzing problem areas and accordingly providing better information to the profession.

DISCUSSION

1. Throughout its discussions and during the consultation process the Subcommittee was struck by the lack of information that exists on the type of continuing learning the profession undertakes, the number of providers of CLE that exist and who they serve, the effectiveness of continuing legal education, educational needs of the profession, statistics on lawyer behaviour in practice, including areas of risk, and other issues relevant to learning needs.
2. Within the Law Society itself information gathering is not consistent, and systems are at various levels of sophistication from department to department. Providers of education indicate that their own systems for gathering data on who attends their programs and how those programs are evaluated could be improved. Local law associations, in-house providers of education, and government providers of education may keep statistics but no one has really investigated this.
3. There is little or no information on the way in which individual lawyers pursue their learning needs, whether through self-study or through continuing legal education programs.
4. Information gathering is a critical feature of providing education whose effectiveness can be measured. Without such information it is difficult to accurately assess learning needs, strengths and weaknesses in the provision of learning supports, or the enhancement of the link between education and competence. At the same time, however, there must be a clear assessment of what information is needed, the uses to which it will be put, and the best approach to gathering it. Otherwise, vast amounts of data could be collected for no clear purpose.
5. The Law Society, education providers, including libraries, and the profession must be prepared to undertake and participate in the information gathering that is a necessary component of the development of a coherent approach to post-call education. All of those interested in education should be involved in this process.
6. If such efforts are not undertaken it is likely that the availability of relevant information will continue to be unsatisfactory or piecemeal at best.

RECOMMENDATION 4

Option 1

Defer a decision on the introduction of mandatory continuing legal education until the fall of 1998. During the period preceding that date initiatives set out in the action plans under Recommendations 1, 2, and 3 should be investigated, pursued, and reported on.

ACTION PLAN

1. Prior to the fall of 1998, the Law Society should
 - a) consider the impact that Recommendations 1, 2, and 3 have had on the development, goals, delivery, production, cost, accessibility, and participation in continuing legal education;
 - b) specify the basis upon which the MCLE decision should be made and consider further details and budgetary updates for the possible MCLE model; and
 - c) communicate regularly with the profession on developments under Recommendations 1, 2, and 3.

2. Convocation should discuss regularly developments under Recommendations 1, 2, and 3.

Option 2

Approve the introduction of mandatory continuing legal education with implementation of such program to occur in January 1999. During the period preceding that date initiatives set out in the action plans under Recommendations 1, 2, and 3 should be investigated, pursued and reported on. In addition, the administrative structure for MCLE should be fully determined, communicated to the profession, and made ready for introduction.

ACTION PLAN

1. Prior to January 1999, the Law Society should
 - a) consider the impact that Recommendations 1, 2, and 3 have had on the development, goals, delivery, production, cost, accessibility, and participation in continuing legal education;
 - b) communicate regularly with the profession on developments under Recommendations 1, 2, and 3;
 - c) communicate on an ongoing basis with the profession and continuing legal education providers the time table for introduction of the MCLE requirement and explain the details of the program;
 - d) ensure the appropriate reporting mechanisms are developed well in advance of the commencement of the program; and
 - e) ensure that all administrative and content components of the program are in place well in advance of January 1999.
2. Convocation should discuss regularly the developments under Recommendations 1, 2, and 3 and the progress and development of the MCLE administrative scheme.

DISCUSSION

Background

1. Although a narrow majority of the Subcommittee has voted in favour of recommending Option 1, the Subcommittee has agreed that both options should be placed before Convocation for its consideration. The discussion around the appropriateness of MCLE is an important one. Thoughtful and persuasive views exist on both sides of the issue. The members of the bar who attended the consultation meetings were fairly evenly divided in their opinions on the issue. It would be a mistake to categorize this issue as one simply related to whether the Law Society should have greater or lesser control over members through governance, although this is certainly one aspect of the discussion.
2. Regardless of which option members support, there are a number of points upon which members agree.
3. The consultation process revealed that regardless of whether members of the profession agree with MCLE, they, like the members of the Subcommittee, believe that important steps must be taken to assess the development and goals of CLE and enhance the delivery, production, cost of, accessibility to, and participation in continuing legal education. Participants in the consultation process see the piecemeal approach to education as a serious shortcoming in the current approach to post-call education. Approval of Recommendations 1, 2, and 3 is important either on its own or as part of the overall implementation plan for MCLE.

4. Option 1 represents neither a rejection nor an acceptance of a minimum mandatory education initiative. Rather, those voting to defer a decision until the fall of 1998 have adopted a view that Recommendations 1, 2, and 3 should begin to be implemented and their impact analyzed before a decision on MCLE is made. Those voting in favour of MCLE with implementation in January 1999 are currently satisfied that a minimum mandatory requirement is an important piece of the learning mosaic, but are satisfied that a commitment to an implementation process is in keeping with the thoughtful development of a coherent approach to post-call learning.
5. The Subcommittee has, in keeping with its mandate, developed a possible MCLE model for Convocation to consider should it decide it is appropriate to implement MCLE. The Subcommittee believes that the model described would complement Recommendations 1, 2, and 3. It has been developed with a view to addressing the time, content, delivery, and cost concerns the consultation process revealed. While this possible model provides the framework and certain details, however, the actual implementation would require further fine tuning and decision making by someone charged with ensuring the pieces of the system are well integrated. The possible MCLE model is described in Appendix C. The projected MCLE budget is set out in Appendix D.

Option One

1. In the view of those Subcommittee members who voted for Option 1, many of the features that would make an MCLE program more acceptable to members of the profession and better able to be introduced easily into Ontario are not yet in place, or require more development.
2. These members place importance on the view expressed by many during the consultation process, that improved learning supports would result in a significantly greater voluntary commitment by the profession to participating in continuing legal education programs. There are two differing views of why such a voluntary commitment is seen as important to develop. The first is that if there is a significant increase in the voluntary commitment to continuing legal education programs, a mandatory program may be less justified. The second is that if the very learning supports members of the profession indicated were necessary to make MCLE work are developed, there will be greater acceptance of any mandatory program that is ultimately introduced.
3. Those who voted for this option consider it the appropriate means by which to reflect the context within which the Subcommittee has operated. They are acutely aware of the effect that the recession, concerns over the Law Society's role in administering profession-wide programs effectively, and cost and time pressures on lawyers have on lawyers' attitudes to MCLE. In their view concrete steps should be taken to enhance local delivery, reduce costs, and gather information that will assist in evaluating programs and analyzing learning commitment and needs before deciding whether a new mandatory program should be introduced.
4. They are of the view, however, that a final decision about MCLE should be made once efforts have been made to implement Recommendations 1, 2, and 3 in a voluntary market, and that the decision on MCLE should be made during the term of the current Convocation. It is for this reason that the fall 1998 date is included in Option 1.

Option Two

1. Those who voted in favour of this option believe that a minimum requirement for participation in continuing legal education will enhance the competency of the profession. They believe that the introduction of such a program is grounded in professionalism. If a profession holds itself out as possessing a certain expertise, then its commitment to learning must be clear. That commitment should consist of both self-study and participation in continuing legal education programs.
2. They view MCLE as being one piece of the post-call education process, and are satisfied that, implemented in a system in which a concerted effort has been made to enhance learning supports and reduce costs, a mandatory requirement would not be onerous, but rather integral to professional development.
3. In their view it is not an obstacle to their support for mandatory education that practice inspection or periodic re-qualification through testing are more intensive means for ensuring that professionals maintain their expertise. The specific goals of these programs and the measurement of attainment of those goals may be different, but this does not render MCLE inadequate. These Subcommittee members believe that the introduction of a minimum public education requirement strikes a balance between there being no profession-wide program whose goal is to enhance competency and ones that are far more regulatory than MCLE.
4. These members of the Subcommittee do not believe the introduction of a mandatory continuing legal education program should be rejected because some members of the profession prefer to learn without attending programming. If one of the goals of an MCLE system is to set some level of minimum standards for post-call education, that system must consider the broad picture. Having said that, however, the system must also enrich the kind of programming that currently exists in order to increase the relevance of this form of continuing legal education for as many members as possible.
5. Like those members of the Subcommittee who voted for Option 1, those who voted in favour of Option 2 have been cognizant of the context within which they have been considering the MCLE issue. Issues such as the impact of the recession on members of the profession, the need for improvement of delivery of CLE, the concerns about cost, time, and content factors, concerns about the effectiveness of CLE, and the value to be placed on self-directed learning, have all been relevant to these Subcommittee members' views.
6. In their view, however, their recommendation that implementation of MCLE occur in January 1999 and their support for Recommendations 1, 2, and 3 reflect their commitment to ensure an MCLE system be developed in a gradual, efficient manner with a view to ensuring accessibility and relevance.

IV

CONCLUSION

In the course of its research and consultation the Subcommittee has concluded that

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- A piecemeal approach to post-call learning has resulted in uneven access to educational tools and opportunities.
- The Law Society should endorse a statement of principles and expectations for post-call professional development and education.
- Post-call professional development and education must be enhanced throughout the province.
- Province-wide, accessible resources for post-call education are essential to the profession if its members are to be in a position to serve the public well, to maintain their professional expertise, and to work efficiently without having to overcome barriers to do so.
- The Law Society, the members of the profession, the Canadian Bar Association - Ontario, the law schools, county and district law associations, other education providers, the County and District Law Presidents' Association, and library resource providers all have an interest and a responsibility to participate in the ongoing development of learning supports.
- Post-call education must focus on both private self-study and participation in continuing legal education programs and activities.
- New creative approaches to continuing legal educational development, creation, production, delivery, accessibility, and cost must be undertaken.
- The views of lawyers who attend continuing legal education must be heeded if education is to be responsive to their changing needs and expectations.
- If mandatory education is introduced it should be as part of an overall approach to enhancing learning supports.
- Coherence, not speed, is the critical feature of the development of post-call educational policy.

The Subcommittee's recommendations are designed to respond to these factors and provide a foundation for a coherent approach to useful, forward-looking education for lawyers.

APPENDIX A

RECOMMENDATIONS 1, 2, AND 3 - SUMMARY OF ACTION PLANS

Immediately

Action Plan Under:

Communicate Statement of Principles and Expectations to the profession and other interested groups.

(Recommendation 1 at page 13)

Ensure that Bar Admission Course materials are placed in county libraries annually.

(Recommendation 2 at page 19)

Analyze the basis upon which videotapes are sent to county libraries. Consider the effectiveness. Communicate information to counties.

(Recommendation 2 at page 19)

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Pursue discussions with LPIC on CLE incentives through LPIC premium credits. (Recommendation 2 at page 20/21)

Revise Notice of Annual Membership Fee form to include section on continuing learning activities. (Recommendation 3 at page 23)

December 1996

Produce Report summarizing Subcommittee research on technology and delivery of CLE. (Recommendation 2 at page 17)

February 1997

Complete assessment of local law association interest in development of teacher training materials and CLE program outlines to assist in development of local CLE programs. (Recommendation 2 at page 16)

Report on feasibility of system for selling CLE materials on a paper by paper basis. (Recommendation 2 at page 20)

Appoint an Advisory Group. (Recommendation 2 at page 21)

March 1997

Report on investigation of possible annual CLE institutes. (Recommendation 2 at page 16)

Report on ways to improve video-tape production, delivery, and cost. (Recommendation 2 at page 17)

Report on state of mentoring throughout the province and whether further efforts to improve are required. (Recommendation 2 at page 17)

Report on improved methods for notifying profession of program content and dates. (Recommendation 2 at page 20)

May 1997

Complete investigation into teacher training materials and local program development outlines. (Recommendation 2 at page 16)

Consider suggestions made during MCLE consultation process for improvement to program content, design, and presentation, and report on responses and proposed or implemented changes. (Recommendation 2 at page 18)

Report on techniques to be implemented for improving written CLE materials to meet lawyer needs. (Recommendation 2 at page 20)

Prioritize written learning support initiatives. (Recommendation 2 at page 20)

June 1997

Report on initiatives proposed or taken to broaden base of volunteer instructors. (Recommendation 2 at page 17)

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Provide proposal for creating practice alert (Recommendation 2 at pages 18/19) and management publication, and for enhanced publications-based CLE.

July 1997

Report by Advisory Group on defining planning needs. (Recommendation 2 at page 21)

End of 1997

Possible annual CLE institute pilot project. (Recommendation 2 at page 16)

Ensure steps taken to expand delivery and production of CLE programs and minimize cost. (Recommendation 2 at page 17)

No Specific Deadline or Included in Other Aspects

Encourage providers to assess learning supports and to provide input into action plans. (Recommendation 2 at pages 17/18/20)

Consult with Libraries Committee of CDLPA on improving county library facilities. (Recommendation 2 at page 19)

Include cost analysis in each report. (Recommendation 2 at page 21)

Evaluate Law Society's education priorities. (Recommendation 2 at page 21)

Evaluate progress of action plans twice a year. (Recommendation 2 at page 21)

Ensure that the Chief Information Officer considers the role for computer systems to support learning needs. (Recommendation 3 at page 23)

Work with LPIC to gather and disseminate information that will assist the profession in risk avoidance and enhancing competence. (Recommendation 3 at page 23)

Encourage providers to develop uniform statistic gathering systems. (Recommendation 3 at page 23)

Leading up to Fall of 1998/January 1999

Make decision on introduction of MCLE. (Recommendation 4 - Option 1 at page 24)

or

Implement MCLE. (Recommendation 4 - Option 2 at page 25)

APPENDIX B

BUDGETARY CONSIDERATIONS - RECOMMENDATIONS 1, 2, AND 3

The Subcommittee does not anticipate that significant budgetary costs should be incurred under Recommendations 1, 2, and 3. To the extent that there may be some direct costs the Subcommittee recommends that these be met from the already approved MCLE Subcommittee budget.

Discussion

1. The action plans included under Recommendations 1, 2, and 3 consist of steps being taken to,
 - a) continue and report on work currently being performed by various Law Society departments or other groups (eg. Department of Education, Communications, Libraries, Information Services, CDLPA Library Committee);
 - b) report on work already done by the MCLE Subcommittee;
 - c) initiate work within existing departments at the Law Society to enhance learning supports;
 - d) communicate and consult with groups within the profession and education providers;
 - e) create an Advisory Group;
 - f) report on possible proposals for developing learning supports, including a requirement that each proposal have a budget attached at the time the proposal is made; and
 - g) encourage providers and other interested groups to undertake their own analyses and development of learning supports.
2. To the extent that the Law Society undertakes the implementation of these action plans under (a), (b), (d), and (f) above, new budgets or financial allocations should not be necessary. This is because the work has either already begun or can be included in the mandate of various departments.
3. In each case where the action plan requires that research be done and a report provided on the feasibility of undertaking a project, it is expected and required that cost implications be fully explored first. This would ensure that costs are not incurred for a project without consideration and approval of a budget first.
4. Under (c) and (e) there will be some direct costs related to meetings and consultations for which existing Law Society budgets have made no direct provision. The Subcommittee recommends that \$25,000 from the already approved MCLE budget be allocated to meet direct costs, such as meeting expenses or travel expenses for committee members to attend.
5. For (g) above, to the extent that education providers and other interested groups undertake their own work on enhancing learning supports, using Recommendations 1, 2, and 3 as a guide, there are no financial implications for the Law Society.
6. To the extent that funds may be needed for any program projects, publication development, or enhanced local CLE initiatives proposed as a result of the investigations and research done under Recommendations 1, 2, and 3, the Subcommittee suggests there are at least 4 possible sources of funds:
 - the Honourable William J. Howland Bequest, the goal of which is to further legal education;
 - partnerships with commercial advertisers and suppliers of learning technology;
 - partnerships among a number of providers where the pilot project is one that can have long term benefits for providers; and
 - revenue from the programs and publications themselves.

APPENDIX C

POSSIBLE MANDATORY CONTINUING LEGAL EDUCATION MODEL (RECOMMENDATION 4 - OPTION 2)

Background

1. The MCLE Subcommittee's mandate includes answering the questions:
 - How could MCLE be delivered most effectively and at a reasonable cost?
 - If MCLE were to be introduced, what kind of program would be designed?
2. The two questions are interwoven. The model the MCLE Subcommittee sets out in this appendix reflects its efforts to propose an MCLE program that would be effective throughout the province and reasonably priced. An MCLE model must, however, be considered in conjunction with, and as a piece of, all the recommendations and action plans set out in section III of this report.
3. An MCLE model must not be simply superimposed onto the current CLE landscape. If it is to be delivered effectively and at a reasonable cost, it must be developed as part of a coherent vision for post-call education.
4. Such a coherent approach would
 - consider the varied needs of lawyers throughout the province.
 - plan education rationally, doing much more than offer an ever increasing array of programs; although clearly an increase in program offerings would be part of that approach.
 - expand the definition of what is considered to be meaningful education.
 - appreciate that although continuing legal education programming is the focus of an MCLE system, supporting the overall competence of the profession requires a commitment to enhancing meaningful learning tools of all kinds.
 - assess a range of "acceptable" costs for CLE and accommodate that range by ensuring both that sufficient programs are available and that regardless of costs an appropriate level of learning supports is available to all.
 - require that in assessing "acceptable" costs, direct costs to participants, incidental costs such as transportation and accommodation, and lost opportunity costs, such as time away from the office, must all be considered.
 - produce a system that is well integrated into professional life so that the mandatory component is not seen as intrusive because the content is relevant, the costs reasonable, the programs accessible throughout the province, and the administration efficient.

Summary of Components of the Model

What is described below is a structure comprising the following main components:

- A requirement that lawyers participate in 30 credit hours of CLE programming or activities over a three year reporting cycle;
- The introduction of a reporting system by which lawyers confirm their participation, with features to ensure compliance;
- Provisions outlining
 - which members of the profession are subject to the requirement;

- what activities will be eligible for credit; and
- how programs and activities are approved for credit.
- A recommended administrative structure; and
- Procedures directed toward quality control, and evaluation of the programs, activities, and the system overall.

Description of the Possible Model

Credit System

1. The Subcommittee has concluded that a credit system based on hours of participation is the most direct and simple way to design a minimum education model. A credit system does not weight one type of program over another. The Subcommittee believes that trying to attribute different credits to different types of learning would be time consuming, administratively intensive, and fraught with value judgments about which type of education is most valuable. So in a credit system, for example, a full day lecture program and a full day skills program where the participant engages in hands-on learning are eligible for the same number of credit hours. This is not to say, however, that a credit system based on numbers of hours does not assess the quality of individual programs. The system would include means to ensure that the content of all programs meets consistent levels of quality.
2. In choosing the number of credit hours that should be recommended the Subcommittee considered a number of factors:
 - To some degree the choice of credits is an arbitrary decision. This is not to suggest that there is no rationale for a given choice, but rather that there is always a valid argument for increasing or decreasing the number of credit hours chosen.
 - In the MCLE jurisdictions that the Subcommittee researched, the typical range of credit hours is 12-18 per year (36-48 hours over 3 years).²⁷ The Subcommittee observed that in reaching this range of hours other MCLE jurisdictions had attempted to balance the goals of the program with the practical realities of time constraints and cost considerations for lawyers.
 - The program would be intended as a minimum requirement. Some members of the profession might choose to make the minimum their maximum, but the program would be directed only at ensuring a minimum commitment to participation in continuing legal education programs.
 - Some jurisdictions have chosen a requirement at the high end of the average hours, but then try to reduce the impact of this by allowing a portion of the credits to be obtained through self-study. Self-study typically includes such things as reading law journals, listening to an audiotape, or watching a videotape at home.

²⁷ An examination of other professions with mandatory continuing education systems reveals a wide range of hours. For example, the College of Opticians requires members to take 30 hours over a three year reporting period; the Certified General Accountants Association of Ontario requires members to fulfil 100 credit units in each three year period, with a permissible 25 credits achievable through self-study; the Royal College of Dental Surgeons of Ontario requires dentists to satisfy 90 credit units over 3 years; and the College of Family Physicians requires members to take 50 hours of education per year.

3. The research and reading that lawyers do on their own is an important part of their post-call education and must be supported, but it is a different component of learning than MCLE is intended to address. Rather than including a self-study component in the MCLE system where it does not belong, the Subcommittee has chosen to recommend that a lesser number of MCLE hours be required than many other jurisdictions have chosen.
4. The Subcommittee believes that a reasonable minimum requirement for the profession would be 10 credit hours per year of participation in continuing legal education programming, with a credit hour equalling 60 minutes. A lawyer who, for example, chooses to satisfy the requirements by attending lecture format programs, could more than satisfy the 10 hour requirement by attending approximately 2 full day programs or 3 half day programs per year. A lawyer who participates in approved law association subsection educational activities for two hours every second month would have 12 credits at the end of one year in the reporting cycle.
5. In order to make the system as flexible as possible, to give lawyers more freedom in the time frame over which they choose to satisfy their requirements, and to simplify the administrative burden of annual reporting, the Subcommittee recommends a three year reporting cycle. This would mean that each lawyer would have to report 30 credits at the end of each three year period. While this has the potential to permit a lawyer to take all the required credit hours in one year and none in the other two years of the reporting cycle, the Subcommittee is satisfied that most members of the profession would spread the requirement over the three years. Further, it may be that in a given reporting cycle a lawyer chooses to attend an intensive program because it can substantially enhance that lawyer's competence. The Subcommittee believes that such choice should be left to each lawyer.
6. There should be no ability to carry credits over from one reporting cycle to the next, although it may be worth considering whether, for the initial reporting period only, lawyers should be able to count credits for programs taken in the year before MCLE is implemented.
7. Assuming MCLE were to be implemented in January 1999²⁸, the initial reporting period should be staggered. It is suggested that the reporting should be done as follows:

Reporting Group (by first initial of last name)	Total Hours
Group 1: A - G	30 hours required by January 2002
Group 2: H - M	20 hours required January 2001
Group 3: N - Z	10 hours required by January 2000

²⁸ The January start date coincides with the Law Society's budget year. Implementation in 1999 would provide a two year lead time. Jurisdictions that have introduced MCLE have recommended that an 18 month lead time is the bare minimum that should be considered. The Subcommittee has not specifically considered the most appropriate month for reporting. It leaves this to be worked out during the actual implementation process. The number and timing of existing reporting periods for lawyers should be considered in assessing the most appropriate date for MCLE reporting. If it is possible to combine the MCLE reporting date with the date on which lawyers must file the "Notice of Annual Membership Fee" form, this should be considered. It should also be considered whether members would be able to report electronically.

8. After the staggered start, each group would have a three year reporting cycle, so that each January one group would report.

Course Content

1. When the Subcommittee began its work it considered whether designing a detailed content model would be feasible. Such a model could require that courses focus on substantive law, skills, practice management or professional responsibility, ethics and attitudes, and that every lawyer would take some course credits in each of these areas. The benefit of such an approach is that it ensures that lawyers are taking courses directed at a number of competency areas as opposed to just one.
2. After analyzing such an approach, the Subcommittee became convinced that it would be extremely difficult to design and administer such a complex program and have it accepted by the profession. At the same time, however, the Subcommittee did not want to lose sight of the original goal behind such an approach, namely that lawyers be encouraged to enhance their competence, not just in substantive law, but also in skills, professional responsibility and ethics, and practice management.
3. The Subcommittee has decided to recommend that lawyers not be required to take courses in specific subject areas to meet their MCLE requirements.²⁹ The Subcommittee recommends, however, that the goal that lawyers pursue education in a number of areas be pursued through the course approval process (discussed further below). What this means is that each application for approval for MCLE credit would indicate the extent to which the course addresses issues of substantive law, procedure, practice management, professional responsibility and ethics, and practice skills. Those who approve courses for MCLE credit would consider whether the program adequately addresses such issues, keeping in mind what is appropriate or relevant for that program.³⁰

Activities that Should Qualify for Credit

1. One of the most important features in ensuring that MCLE can be delivered effectively and at a reasonable cost is to permit a broad range of activities to be eligible for credits. In the course of the consultation process, the Subcommittee was impressed with the local law association subsection educational programs and discussion groups that currently exist. Many people expressed concern that such activities might not qualify for MCLE credit. The goal of an MCLE program is to allow lawyers to participate in meaningful continuing education. It is not the intent of the program to insist that such education should only happen in a lecture hall. The more creative lawyers can be in the development of their learning forums, the more integrated into their professional lives MCLE could become. At the same time the process must be balanced to ensure that earning MCLE credits is not substantially easier for some members of the profession than for others.

²⁹ Clearly for other purposes, such as certification, lawyers could be required to take courses in specific subject areas.

³⁰ In developing the applications for course approval those implementing the system should spell out general principles for this requirement. It is not intended to hinder freedom to produce the kinds of programs education providers and lawyers consider meaningful, but rather to encourage providers to stretch the boundaries of what programs can achieve and to pursue a goal of coherent education that addresses both what lawyers want and need.

2. Programs and Seminars

The Subcommittee recommends that, subject to meeting the program and activity approval requirements discussed below, public lecture programs, seminars and skills-based programs, and courses taken as part of a post-graduate degree in law should be eligible for credit. Videotape replay programs, in which local law associations or other groups run a CLE program using the videotape as the content, should also be eligible for credit.

3. Teaching

Teaching in CLE programs, law school courses,³¹ and the bar admission course should be eligible activities. Such teaching is part of an education process. In preparing for and teaching such course or program, the teacher is also learning.

The Subcommittee has some concern, however, that there is a potential for some unfairness if certain lawyers are eligible to satisfy all their requirements this way. This is not an activity that would be available to all. Further, depending upon the nature of the teaching, there may be uneven investments of time in the process. Moreover, MCLE is about participation in education as learner, not just as teacher. At the same time, however, the Subcommittee is cognizant of the fact that in many cases presenters will invest significant time in teaching.

In an effort to balance these various considerations, the Subcommittee is recommending that in any reporting period no more than 15 of the required 30 credits should be available for teaching. One hour of teaching will be equal to one credit. Where lawyers teach for less than one hour, which may often be the case in CLE programs, they should be eligible to claim 1 credit hour.

No credit hours should be available for preparation time. The Subcommittee recognizes that a great deal of preparation time goes into teaching, but like other self-directed activities, preparation time is not easily assessable for credit.

4. Writing

The issue of permitting credit for writing is one with which other MCLE jurisdictions have also grappled. The Subcommittee views this activity as closer to self-study than to the kind of education to which MCLE is primarily directed. Considering the relatively low number of credit hours lawyers would be required to earn in any reporting period, and considering that they may receive up to one-half of those credits for teaching, the Subcommittee recommends against permitting credits for writing.

5. In-House Activities

In many jurisdictions this category has been the subject of some discussion. In most cases the category is subdivided into government in-house programs (for our purposes this would include community legal aid clinics and administrative tribunal training programs) and law firm in-house programs.

³¹ Law school professors should not be entitled to fulfil eligible MCLE credits by counting the courses they teach in the course of their employment. They should, however, be able to claim credit for teaching outside their employment (eg. in a CLE course).

i) Government In-House

The Subcommittee has not made a study of all the government in-house programs that exist. For the ones it has considered, employees have access to a number of in-house programs, and in some cases these are mandatory. The programs would appear to meet the kind of qualitative requirements the Subcommittee considers necessary. From a content perspective, these programs often provide the lawyers who are employed in government with content that is not available anywhere else. So, for example, lawyers who work in community legal aid clinics have difficulty finding programs offered by non-government providers that deal with areas of law in which they practice.

At the same time, however, with only 30 credit hours required over three years, the Subcommittee is satisfied that it would be possible for government lawyers to find some valuable continuing legal education programming that would meet their educational needs and would provide such lawyers with the important perspective that comes from interacting with lawyers with whom one does not work on a daily basis.

To reflect a need to balance the particular educational requirements of government lawyers with the importance of interaction among the members of the profession, the Subcommittee recommends that such lawyers (including community legal clinic lawyers and those employed by administrative tribunals) be entitled to obtain 15 credits hours of their 30 required hours in each reporting period by participating in-house programs, provided such programs meet the same approval requirements as other accredited programs.³²

ii) Other In-House

There are a number of firms that have in-house education departments or programs for lawyers employed by the firm. Many MCLE jurisdictions have considered whether it is appropriate for such in-house programs to qualify for credit toward MCLE requirements.

The Subcommittee does not believe that it would be difficult for lawyers in firms to find public CLE programs that are relevant.

The primary concern about approval of in-house programs is that, in a system designed to accomplish a minimum amount of participation in public continuing legal education programs, permitting small numbers of lawyers to obtain all their credits by remaining in-house is almost akin to a self-study approach. Lawyers do not hear perspectives other than the firm's. One of the goals of an MCLE system is to promote the interaction in learning by bringing lawyers together.

There is also a concern that to allow firms to receive credit for in-house programs is to give an unfair advantage to larger firms over sole practitioners.

The Subcommittee recommends that law firm in-house activities not be eligible for MCLE credit.³³

³²During the comment period the Subcommittee received a submission from the Clinical Funding Committee expressing disagreement with the recommendation that clinic lawyers be allowed to obtain only 15 of their 30 credits over three years through in-house training programs. The nature of the submissions are set out in Appendix E.

³³During the comment period the Subcommittee received identical submissions from Osler, Hoskin & Harcourt, Blake, Cassels & Graydon, and Gowling, Strathy & Henderson expressing disagreement with the Subcommittee's recommendation not to permit credit for law firm in-house training. The nature of the submissions is set out in Appendix E.

6. Local Law Association and Other Discussion Groups

As has been discussed elsewhere in this report, the Subcommittee is impressed with the learning initiatives undertaken by local law associations, such as subsection discussion groups and dinner meetings or CBAO section meetings. These meetings include hands on learning, advocacy training, lectures, presentations by members of the group, and, in some cases, written papers. These initiatives are based in local communities, are regular, reflect local practice concerns, are inexpensive, and are relatively accessible. They provide lawyers with the opportunity to interact and to benefit from different perspectives. These discussion groups should be encouraged and enhanced. The Subcommittee recommends that, provided the programs undertaken by these groups meet the same approval requirements as other programs, they should qualify as eligible activities.

7. Self-Study

As discussed above, self-study activities should not be eligible for credit. For example, purchasing an audiotape or a videotape of a live program to listen to at home, reading the *Ontario Reports*, or doing other legal research would not be considered eligible activities for the purposes of the MCLE system. Engaging with other lawyers in an interactive computer course or discussion group, participating with other lawyers in an audio or video interactive program, or attending a live program by audio or video feed are not self-study activities and should be eligible for full credit.

Approval of Programs/Activities for MCLE Credit

1. There are two main ways by which to approve eligible programs/activities. The first is to approve providers, so that any program they offer is automatically approved. The second is to approve on a course by course basis. Under the first system approval may be sought for individual programs as well. Under both systems lawyers may seek approval for individual programs they wish to attend when no one else has sought approval. This would typically be the case for a program being offered in another jurisdiction.
2. The Subcommittee recognizes advantages in each approach but is recommending course by course approval, particularly in the early years of the program. This method would function as an important part of quality control, as well as providing a means for considering the types of programs that are being developed, the programs that lawyers are attending in other jurisdictions or disciplines, and the impact that initiatives under Recommendations 1, 2, and 3 of this report are having.
3. As a first step, in order to be eligible for approval an activity should contain significant current intellectual or practical content and be related to legal subjects and the legal profession. This could include cross-profession activities designed to enhance a lawyer's legal skills and ability to practice law; but there would have to be a clear link established between enhancing lawyer competence and the nature of the activity for which approval is sought.
4. The Subcommittee is aware that it may be much easier for providers who do a significant amount of programming to provide the kind of program information that would assist in monitoring quality control, than would be the case for small law associations or individual lawyers or discussion groups. It is not intended that applications should be overly complex or hinder requests for approval.

5. In order to assess whether an activity should be approved for credit, those seeking approval should provide program/activity information³⁴ including:
 - a) the specific objectives of the course or activity;
 - b) where applicable, the names of any presenters and their expertise;
 - c) the content of the course or activity and the nature of the written course materials;
 - d) the length of the program or activity and the number of credit hours for which approval is sought;
 - e) the extent to which the program or activity addresses issues of substantive law, procedure, practice management, professional responsibility and ethics, and practice skills;
 - f) the level of expertise to which the program or activity is directed (where applicable);
 - g) the method of delivery; and
 - h) the nature of the activity (eg. lecture, skills workshop, discussion group).
6. Approval may be sought for programs or activities that originate outside of Ontario.
7. Where a program is denied approval by the MCLE administration, there should be an appeal to an Advisory Board made up of independent members of the profession to assess the appropriateness of the decision.
8. The Subcommittee also recommends that all activities and courses include a mechanism for evaluation of the course or activity by participants. This is essential to ensure that providers are accountable for the quality of the programs and to provide an opportunity to assess whether educational needs of the profession are being met. If possible, a uniform evaluation system should be implemented that allows for information to be gathered easily and used effectively.
9. The Subcommittee believes that it is essential for providers of continuing legal education to make a commitment to ensuring that CLE is developed throughout the province, not just in large metropolitan centres. Providers must be encouraged to undertake and assist with the development of such an initiative.

The Subcommittee recommends that in the initial period of an MCLE system the extent to which such development occurs voluntarily should be monitored as well as encouraged.

If the evaluation of the MCLE system after its initial period reveals that there continues to be concern about the extent to which province-wide CLE exists, changes to the approval system could be implemented that would require providers of more than a specified number of programs to provide a percentage of their programming outside of large metropolitan areas.

³⁴ These criteria are not intended by the Subcommittee to be an exhaustive list. Clearly some of these criteria will apply better to a lecture or seminar program than to a discussion group that meets once a month. Different requirements may be more suited to different activities, but such criteria must be consistently designed and applied to assist in the meaningful development of quality programs.

Reporting System and Consequences of Non-Compliance

1. One of the goals of the reporting system must be simplicity. Lawyers should be able to complete the reporting process quickly, and the administrative costs of the reporting system should be kept as low as possible.
2. Lawyers should be required to complete a form setting out the number of credit hours they have completed in the reporting cycle, the title of each course or activity, and the providers who offered the courses or activities.³⁵ They should simply sign the report certifying that they have participated in the programs and activities with the number of hours set out. The document need not be a sworn statement.
3. Lawyers and providers would each be responsible for keeping track of participation in programs and should keep such records for the relevant reporting period and one additional year. Provider records would consist of proof that the lawyer had attended on the program date.³⁶ In each reporting cycle, a small percentage of lawyers, randomly selected, should be asked to submit proof of attendance, and this should be checked against provider records.
4. In any given year there would be approximately 7,000 reporting statements being processed. A computer program must be designed to process the reporting data.³⁷ The forms lawyers complete must be computer readable. Such a system must be in place well before the January 1999 start date for the program. The Law Society's Chief Information Officer should assist in the design of such a program. Such a program or equally satisfactory alternative must be in place by the fall of 1998 to avoid a delay in commencing the program.
5. Four months before each group's reporting deadline, the lawyers in the group should receive a reminder card stating that the deadline is approaching. If a lawyer fails to submit the form on the deadline, a further card should be sent indicating that the lawyer must comply within 60 days from the reporting date or be administratively suspended. Once suspended, in order to be re-instated the lawyer should fulfil the credit hour requirements and submit the reporting form along with an administrative late fee. Suspension should be an administrative process, with no hearing required. In many jurisdictions the late filing fee appears to range from a flat fee between \$100 and \$250 dollars to graduated fees where the lawyers pay increasingly larger fees depending on the length of the period of non-compliance. In some cases a fee is also charged for late filing after the deadline but before the suspension date. The Subcommittee believes that such a late filing or reinstatement fee should be included in the MCLE model.³⁸

³⁵ The form could include a section on other types of learning as well, such as self-study. Only the MCLE section is discussed here.

³⁶ In some MCLE jurisdictions providers and lawyers are obliged to send proof of all registrations to the MCLE administrator. These are scanned into the computer system and periodically the administrator sends out progress reports to the lawyers as to the status of their credits. A number of jurisdictions have begun with this system and then moved away from it as being labour intensive. The Subcommittee believes this is an unnecessarily complex system.

³⁷ There are a number of computer programs in place in other jurisdictions that may be useful in Ontario. These systems should be investigated.

³⁸ It would be important to ensure the existence of statutory authority to levy such late or non-compliance fees.

6. The Subcommittee has considered the impact on a lawyer of being unable to practice for failure to attend educational programming or failure to submit reporting forms. In the Subcommittee's view, this result for non-compliance is not unreasonable considering the lengthy period the lawyer would have to complete the MCLE requirements, the relatively modest number of credits lawyers must acquire, the long reminder period and the period of grace within which to complete the form, the deferrals/exemptions from the requirement discussed below, and the simplicity of the suggested administrative form. If the system is to be taken seriously, there must be effective procedures to ensure compliance. The Subcommittee is also persuaded of the reasonableness of this approach by the high compliance statistics other jurisdictions report.³⁹

Exemptions/Deferrals

1. In any mandatory program there may be a number of groups exempted from the requirements or for whom fulfilment of requirements of the program are deferred. The Subcommittee has been concerned that the number of exemption/deferral categories be kept to a minimum because the system is intended to apply widely to the profession, and because broad and large numbers of categories of exemption/deferrals will overwhelm the administration of the program. MCLE is a system designed primarily to ensure that lawyers who use their legal skills on a regular basis continue to enhance and maintain them. The Subcommittee recommends that there be 2 exemption/deferral categories:
 - lawyers who have indicated on their "qualification status" form that they do not make substantial use of their legal skills on a regular basis in their current work; and
 - lawyers for whom compliance in a given reporting period is impossible due to prolonged illness or disability or other related hardship.
2. The Law Society requires all members of the Society to complete a "Qualification Status" form indicating whether they are currently making substantial use of their legal skills in their work. If they do not make such use for five or more consecutive years they may be required to take requalification training programs before re-entering practice.

The Subcommittee recommends that all lawyers who indicate on their Qualification Status form that they make substantial use of their legal skills on a regular basis in their current work and are found to do so, should be required to meet the MCLE requirements.⁴⁰ They cannot be said to be using their legal skills for the purposes of avoiding the requirement to requalify, but argue in another context that they should be exempted from MCLE.

³⁹ Minnesota reports a 98% compliance rate for the 1994 reporting year.

⁴⁰ This would include lawyers who complete the "other" category and who are deemed to be making substantial use of their legal skills. Currently, lawyers who do not complete their Qualification Status form are deemed not to be making substantial use of their legal skills on a regular basis in their current work. To correspond with this approach the Subcommittee recommends that such members not be subject to MCLE requirements during that period. If, however, at a subsequent point in time they prove that they have been using their skills, they would have to demonstrate that they have fulfilled their MCLE requirements.

Lawyers who indicate on their Qualification Status form that they do not make substantial use of their legal skills on a regular basis in their current work should be eligible to apply for exemption/deferral from the MCLE requirements for the period in which they continue not to use those skills. Because members may not be able to foresee the length of time over which they would require exemption/deferral, a mechanism should be developed for determining how the exemption/deferral can be applied.

If, for example, the period were five years or more, these members would become subject to whatever requalification steps are in place and would, upon commencing to use their legal skills, be subject to the MCLE requirements.

If such period lasts fewer than five years, however, such members should be obliged to catch up on their MCLE requirements. A method for apportioning the credits over the period of absence should be determined.

Some members who are found not to be substantially using their legal skills may nonetheless want to continue to meet MCLE requirements as part of complying with the pre-emptive regime established under the requalification rules, and thereby avoid having to requalify after 5 years. Because of this, the Subcommittee recommends that members not substantially using their skills be expected to apply if they wish to be exempted from or have a deferral of the MCLE requirements.

3. There should not be many members who fall within the category of prolonged illness or disability or other related hardship, because most lawyers not using their legal skills would be eligible for exemption/deferral as set out above. This category would be available primarily to people who expect to be in a position to comply with MCLE requirements, but who, for unforeseen reasons such as sudden ill-health, find themselves close to the end of the reporting cycle without the ability to meet the full credit requirements.

It is clear to the Subcommittee that there must be room in the system to exempt or allow deferrals for such lawyers from the requirement. Guidelines should be developed for this category to ensure that the category is not open-ended.

MCLE Administration

1. Legislative Authority
To the extent that introduction of an MCLE requirement or any of its components would require legislative amendment, the Subcommittee recommends that this be done in conjunction with a series of other amendments that are currently being prepared by the Law Society.
2. MCLE Structure
There has been some discussion about whether MCLE would be best administered by Law Society staff or some other body. The Subcommittee has considered whether an irreconcilable conflict would exist if the Law Society administered the system, while at the same time being an education provider. There has also been some discussion that a regulating body not tied to the Law Society would be more financially accountable.

The Subcommittee believes that the cost of establishing and running an MCLE system would be less if the operation is part of the Law Society than if a stand alone operation were to be established. This is because costs related to rent and support services, such as information services, would likely be significantly lower than in a separate facility.

The Subcommittee has gone to great lengths to express its belief that any MCLE system that is introduced should operate as one part of a coherent approach to post-call learning. It is important that the running of the MCLE system, including policy decisions about post-call education, be co-ordinated to complement the developments under Recommendations 1, 2, and 3. This would be more likely to happen if the system were part of the overall Law Society operation.

The Subcommittee is satisfied that an advisory body made up of independent members of the profession could be appointed to consider disputed course approvals. This body could deal with conflicts, whether real or perceived. The Subcommittee has also recommended that cost evaluations of the system be done regularly to ensure that the system continues to be run efficiently.⁴¹

3. Staff Requirement

The Subcommittee has discussed staff requirements with some MCLE jurisdictions in the United States, particularly where the number of lawyers is similar to ours. Depending upon the type of reporting requirements chosen, the reporting system may be more or less labour intensive, which may affect staffing requirements.

The Subcommittee believes that if an appropriate computer system is in place, and if reporting and reminder systems are kept simple, a full-time staff of 3 employees would be sufficient. This would be made up of the MCLE administrator, an assistant to the administrator, and a secretary.⁴²

4. Financing the Administrative System

MCLE systems are most often financed by assessing a modest annual fee on members of the profession and/or charging a fee for each application for program approval, as well as charging fees for late filing and for re-instatement.

The first budget set out in Appendix D discusses projected costs for administering the MCLE program and sets out the advantages and disadvantages of the different ways in which revenue for the program can be generated.

The Subcommittee anticipates that to ensure the program would be ready to begin in January 1999, it would be necessary to hire the MCLE administrator in early 1997. The second budget set out in Appendix D sets out a projected budget for the year in which an MCLE administrator is hired.

5. Cost to Each Lawyer of CLE Programming

The Subcommittee has considered whether it is practical to try to project what each category of program/activity might cost if an MCLE system were to be introduced. It has decided that it would not be practical to try to do this because there is no simple way to project exact numbers of program offerings that will exist under each possible category.

⁴¹ The Subcommittee believes that the work load of the advisory body would not be heavy. In Minnesota in 1994, for example, 6,016 program applications were approved and only 202 were rejected. On the issue of a possible conflict in being both MCLE administrator and provider the Subcommittee understands that in Kentucky the MCLE administrator is also a CLE provider and the system appears not to have run into difficulty in that regard. Wyoming has also recently adopted this approach.

⁴² Minnesota and Louisiana each have 3 staff. In Minnesota the MCLE administrator handles three positions, spending approximately 1/3 of her time on MCLE.

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The development of the action plans under Recommendations 1, 2, and 3 is critical to meeting the cost concerns of members of the profession. The Subcommittee has made it clear that local, shorter CLE must be developed to reduce cost concerns.

It is important to note that some initiatives already exist and more would develop under Recommendations 1, 2, and 3. Currently, for example, a London, Ontario family lawyer could belong to the local family law subsection, which meets approximately one evening per month for a few hours for a program on family law issues. This lawyer could also attend the Advocates' Society Court House Series in London (a total of about 8 hours over a 2 month period). The number of hours under this approach would total approximately 28 (almost the entire requirement for one 3 year reporting period under the possible MCLE model) for a total of \$140. Both programs are offered at the end of the working day. They are locally delivered and have no significant incidental costs.

One goal of an MCLE system would be to develop many "small bite" approaches to learning in a broad range of topic areas. Through the initiatives set out under Recommendations 1, 2, and 3 efforts would be made to identify means for developing many more such discussion groups and programs.

In the two years leading up to the recommended implementation date, work must be done by all providers to develop creative ways to produce more cost effective programs.

Some providers currently have bursaries to assist financially lawyers who find it difficult to pay for CLE. The Subcommittee believes strongly that bursaries such as these are extremely important and recommends that an MCLE budget should include an amount for bursaries. In addition, one role of the MCLE administrator could include assisting members having financial difficulties to locate CLE programs and activities that meet their needs and budget. Since the MCLE administration would have information on all programs for which MCLE credit is sought, the administrator would be in an excellent position to provide resource information to such lawyers.

6. MCLE Review
There must be a built-in, regular review of the system. The first review of the program should be done at the end of the first three year reporting cycle. It must be done in conjunction with an assessment of the developments in post-call education overall and with the benefit of the information gathered under recommendation 3 and the evaluation of programs gathered under the MCLE system. The review must not be *pro forma*. The review must examine the system's effectiveness, cost to members of both programs and administration, and improvements that can be implemented. If the first review finds that the program should continue, further reviews should be done at regular intervals.

APPENDIX D

PROJECTED MCLE BUDGET

A. First Operational Year (January 1999)

(i) Possible Revenue Sources

There are two primary methods for obtaining revenue to fund the administration of the system.

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- a) Charge an annual fee to each member who is subject to the requirement. As of October 1996 that figure would be approximately 22,700 members. At \$10 per member revenue per year would be \$227,700. At \$9 per member per year revenue would be \$204,300. At \$8 per member per year the revenue would be \$181,600.

Advantages: Easy to administer.
 Available all at once and at the same time each year to fund the budget.
 Even handed in its application across the profession.
 No hidden cost to the member.
 Could be introduced before the first operational year to fund start-up costs of the program.

Disadvantages: An additional levy to the profession.

- b) Administrative user fees may be chosen as the means to raise funds. These might include,

- requiring providers to charge an administrative fee to lawyers attending programs and remit the money to the MCLE administration; or
- requiring that each application for approval of a program for MCLE credit be accompanied by an application fee; or
- a combination of both methods.

Such fees can be levied on a per program basis or a per credit hour basis.

If the fee to lawyers is levied on programs attended, lawyers will pay different amounts. For example, if the fee is \$5 per program a lawyer who attends 6 all day programs over the 3 year reporting period would pay \$30 in administration fees. If a lawyer attends a 2 hour discussion group 5 times a year over 3 years, that lawyer will pay \$75 in administration fees.

If the fee is based on hours of education then most lawyers will pay for approximately 30 hours. Based on a fee of \$1.00 per hour every lawyer would pay \$30 in each 3 year reporting period.

If the fee is for program approval only, there would have to be a fee that would cover the expenses based on the number of program approvals expected. For example, 6000 applications⁴³ for program approval at \$35 per application would provide revenue of \$210,000, but 5000 applications would provide revenue of \$175,000.

In order to avoid placing an unfair burden on small providers, local law associations, and individual lawyers seeking program approval, it might be advisable to charge different application fee rates.

Advantages: No addition to members' annual fee.

⁴³ While this number may seem unrealistically high, Minnesota (with approximately 16,000 active lawyers) reports 6,218 applications for program approval in 1994. They approve on a program by program basis, as the Subcommittee recommends should be done in Ontario.

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Disadvantages: Complicated to administer.
 Funds received throughout the year; more difficult to budget.
 If a fee is charged to lawyers based on a per program basis, fees for each lawyer would be different.
 If levied for program approval only, hidden costs may be passed on to each registrant through additional program costs.
 Funding source for start-up costs for the MCLE system must be found from another source.

Subject to legislative authority being in place, some additional revenue can be obtained by charging members for late reporting and for reinstatement if administratively suspended.

(ii) Projected Budget - First Operational Year (January 1999)

Projected Revenue (approximate - see discussion above)	220,000
Expenses	
Salaries - Permanent (3 full-time employees)	120,000
Salaries - Part-time	25,000
Employee Benefits	20,000
Professional Memberships	2,000
Courses/Conferences	1,500
Publications	500
Office Expense (Supplies)	2,000
Postage Delivery	7,000
Photocopy	1,000
Travel	4,000
Printing and Stationary	3,000
Long Distance/Telephone	2,000
Information Services	10,000
Furniture and Equipment	1,000
Depreciation Expense	1,000
Leases - Copier, Fax	2,000
Program Development/Committee Expenses	4,000
Bursary fund	10,000
Total	216,000

(iii) Discussion

Line Items

1. Salaries and Benefits

The salary and benefit figures are based on the following assumptions.

- There would be 3 full-time employees - the MCLE administrator (at a salary of \$60,000), an administrative assistant (at a salary of \$35,000), and a secretary (at a salary of \$25,000).
- During the reporting periods each year it might be necessary to hire part time help to assist with processing reporting forms, late compliance situations, and telephone inquiries.

In estimating a need for three full-time employees the Subcommittee considered the experience of Minnesota, which has approximately 16,000 active lawyers. It employs two full-time staff and its administrator spends only one-third of her time on MCLE.

2. Professional Memberships

If the MCLE administrator is a lawyer, then professional memberships would include Law Society annual fees. The administrator might also belong to the American organization of MCLE administrators (ORACLE).

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3. Postage
Postage would be one of the larger administrative costs. If the MCLE reporting dates are co-ordinated so that they are the same as the date on which members complete their Notice of Annual Membership Fee form and their Qualification Status form, piggy-backing of mailings could keep costs down.
4. Travel
The MCLE administration would include a volunteer advisory board to consider policy issues related to the system, and appeals from refusal to approve programs and grant exemptions/deferrals. Some members would be required to travel to Toronto for meetings.
5. Information Services
Computer support would be an ongoing expense for running the computer program. This estimate is based on support costs for another similar Law Society department. This figure does not include start-up costs.
6. Depreciation
In the start up period of the program office furniture and computer equipment would have to be purchased.
7. Bursary Fund
A discussion of the role of the bursary fund is included in Appendix C on page 49.

B. Start-up Costs

1. To ensure the program is ready to begin in January 1999, it would be necessary to hire the MCLE administrator well before implementation, preferably by January 1, 1997. Most of the same line items included in the budget set out above would be relevant in the two years preceding the implementation of the program, although the expenses themselves may be slightly lower, particularly if only the administrator were hired for the first year. A projected budget follows here.
2. If it is agreed that the best method for funding the administration of MCLE would be through a small increase in the annual levy, then such levy could be introduced for the 1997 year and would provide the revenue source for start-up costs of the program.
3. If, on the other hand, it is decided to fund the ongoing operation through program application fees and registration fees, as discussed above, then it would be necessary to find another source of revenue for the start-up costs.

(i) Projected Budget for First Year of Employing an MCLE Administrator

Expenses	
Salary - MCLE administrator	\$60,000
Employee benefits	7,800
Professional membership	2,000
Publications/Courses	1,000
Office Expenses (Supplies)	2,000
Postage Delivery	5,000
Photocopy	1,000
Travel	4,000
Printing and Stationary	3,000
Long Distance/Telephone	2,000
Information Services	10,000
Furniture and Equipment	4,000
Depreciation Expense	1,000

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Program Development/Committee Expenses	4,000
Total	\$106,800

(ii) Discussion

The discussion of line items set out for the operational budget applies to this budget as well. The salary and benefit figures set out for this budget, however, are based on the assumption that in 1997 only the MCLE administrator would be hired to begin the process of finalizing the details of the model and notifying the profession of the implementation of the model in January 1999.

APPENDIX E

COMMENTS FROM THE PROFESSION ON THE REPORT

Background

On March 14, 1996 the Legal Education Committee approved the circulation of this report to the profession for comment. A Notice to the Profession and the Executive Summary of the report were published in the April 5, 1996 *Ontario Reports*. A further notice and description of the Subcommittee report were included in the March 1996 *Benchers Bulletin*. The Notice advised the profession that the complete report could be obtained in the County and District law libraries or from the Subcommittee's Project Director. To ensure wide awareness of the report the Subcommittee

- sent copies of the report to all CLE liaisons and County and District Law Association Presidents, County and District law librarians, and individuals who specifically requested ongoing notification of the Subcommittee's work;
- provided the Canadian Bar Association-Ontario Council with copies of the report for its consideration at the March 29, 1996 Council meeting;
- sent a copy of the report to Harrison Arrell, President of the County and District Law Presidents' Association, offering to answer any questions, provide information on the Subcommittee's process, or attend the Association's May meeting; and
- spoke to Subcommittee members from the Advocates' Society and the County of York Law Association to determine if their Boards planned to formally consider the report.

The members of the profession were encouraged to comment on the report or the Executive Summary and were asked to do so by May 3, 1996.

Comments

a) Individuals

There were 23 requests for the report. Twelve individuals submitted comments. Overall the comments were fairly brief. The comments provided were based on a reading of the Executive Summary, not the full report. Each person who provided written comments received an acknowledgement and response to the comments. In

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many cases it was possible to direct the writer to those aspects of the report that dealt with the issues raised in the comments. The nature of the comments received and the Subcommittee's response to some of the comments is summarized below.

- One non-practising member called to express concern that he had not been aware of the consultation meetings. He also indicated concern that there are no income tax incentives on course registrations for non-practising lawyers.
- One member spoke about the prohibitive cost of CLE and advised that his firm has organized monthly study sessions. He indicated the firm's desire for videotapes to be made available for sale or rental to the profession at large.
- One member endorsed Recommendations 1, 2, and 3 and Option 1 of Recommendation 4. If MCLE were adopted he thought 30 hours was a reasonable requirement, that law associations should be in the vanguard of organizing CLE mostly through videotape replays, and that the costs should be kept down.
- One member indicated personal agreement with the introduction of MCLE, but noted that as a sole practitioner in Northern Ontario he was concerned that there be more CLE offered in locations outside Toronto. He indicated that cost was also a significant issue and suggested that "anything more than \$150.00 for a one day program seems excessive". He also indicated that it would be helpful if more programs were offered on the weekend to reduce the time lost in the office.
- One member expressed concern that the Subcommittee had not addressed the issue of the cost of CLE. He suggested a recommendation that if CLE were made mandatory there be a mandatory fee cap enforced on those offering education thereby eliminating the business/profit aspect. He suggested a possible non-profit organization be set up, made up of members of the bar willing to share their expertise for no fee.
- One member expressed support for Option 2 of Recommendation 4, but felt that 30 credit hours over 3 years was too low. He suggested that in view of the rapid changes in the law more minimum education would be preferable.
- One member was under the impression that the Subcommittee considers that the biggest obstacle to CLE is lack of will on the part of the profession. He indicated that lack of equal access to education is the problem. He was sent the report to demonstrate that his impression of the Subcommittee's views was mistaken.
- One member endorsed Recommendations 1, 2, and 3 and Option 1 of Recommendation 4. He then commented on the summary of the MCLE model included in the Executive Summary. He agreed with the summary of the model except for the requirement that lawyers who failed to meet the reporting requirement within 60 days following the reporting date be suspended. He believed that it would be unrealistic to expect someone who had not attended the required 30 credits over 3 years to meet all the requirements within 60 days. He suggested that instead the lawyer be given 12 months to comply by completing the outstanding credit hours (to a maximum of 30 hours) plus the first 10 credit hours from the next reporting period. In

replying to this submission the Subcommittee noted that by giving members a short period within which to bring an unfulfilled requirement into good standing it will be clear from the outset that members who leave their credits outstanding well into their third year of a reporting cycle run a substantial risk. In view of the relatively modest recommendation for 30 hours of education over 3 years, it is not unreasonable to expect that people will meet their requirements on time.

- Two members who are Ontario lawyers practising in Hungary expressed the view that lawyers in their position would be unable to meet the MCLE requirements and should be exempted during their absence from Ontario. They were sent the report, which discusses the link the Subcommittee sees between the qualification status and MCLE requirements on pages 46-47 of Appendix C.
- One member, who was, until recently, a CLE liaison in one of the counties, spoke to the Project Director about introducing incentives for attendance at CLE and also about the need for more local CLE. He commented, however, that he thought that it was beneficial for some CLE to be delivered by Toronto specialists as this could bring specialist education to the generalist.
- Another member commented on the need for greater accessibility to CLE, both geographic and financial, and for access to tax deductibility of CLE fees for employed lawyers.
- One member indicated that with respect to Recommendation 1 no statement should emanate from the Law Society without input and consensus from the profession on the content. With respect to Recommendation 2 the member stated that he did not think the Law Society could run an efficient, sensible, inexpensive plan. With respect to Recommendation 3 he felt too much information is being sought from members and was concerned about what steps would be taken to protect privacy. With respect to Recommendation 4 he agreed with Option 1. The details of the Subcommittee's consultation with the profession were sent to the member. The member was also sent the report to clarify that Recommendation 2 is independent of mandatory CLE and envisions a collaborative development of learning supports among all those with an interest in lawyers' post-call education.

b) Organizations and Firms

The following organizations and firms commented on the report.

Advocates' Society
Blake, Cassels & Graydon
Canadian Bar Association - Ontario
Clinic Funding Committee - Ontario Legal Aid Plan
County and District Law Presidents' Association
County of York Law Association
Gowling, Strathy & Henderson
Osler, Hoskin & Harcourt

- The Advocates' Society's Board considered the recommendations and endorsed Recommendations 1, 2, and 3 and Option 1 of Recommendation 4.
- The Canadian Bar Association - Ontario's Council considered the recommendations on March 29, 1996. The Council endorsed Recommendations 1, 2 (with a slight amendment), and 3, and Option 1 of Recommendation 4. It voted against Option 2. With respect to Recommendation 2 the Council voted in favour of a minor amendment to provide that "the Law Society should co-ordinate its efforts to implement the plan in consultation with other CLE providers in the province, including CBAO".

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- The County and District Law Presidents' Association dealt briefly with the recommendations at its May 10, 1996 plenary session. Among those Presidents present when the recommendations were outlined, there appeared to be a consensus in favour of Recommendations 1, 2, and 3 and Option 1 of Recommendation 4.
- The Board of the County of York Law Association considered the recommendations at its May 15, 1996 meeting. It approved Recommendations 1, 2, and 3 and voted strongly in favour of Option 1 of Recommendation 4.
- Osler, Hoskin & Harcourt, Blake, Cassels & Graydon, and Gowling, Strathy & Henderson sent identical submissions commenting only on that aspect of the report that deals with the issue of MCLE credits for in-house training. The Subcommittee has recommended against permitting MCLE credit for in-house training as discussed on page 41 of Appendix C. The law firm submissions express opposition to this recommendation. They
 - describe the extensive nature of the in-house curriculum;
 - discuss the commitment they have already made to post-call learning for their members, mirroring the views the Subcommittee has taken on the issue;
 - describe the extent to which in-house training has been recognized in varying degrees in other MCLE jurisdictions;
 - state that from an educational perspective it is not appropriate to deny in-house programs credit; and
 - emphasize that the recommendation would have the effect of discouraging the development of such in-house programs, force firms to pay unnecessarily for outside courses, and be contrary to the spirit of the report.

The submissions request that MCLE credit for in-house training be permitted on an equal footing with other CLE programs and activities.

In its reply to the submissions the Subcommittee noted that it had spent considerable time discussing in-house credit in the course of which many of the points discussed in the law firm submissions had been raised. The Subcommittee's recommendation is not a comment on the educational value of in-house programs, which it believes have significant educational value. In comparing in-house programs to self-study the Subcommittee was simply expressing the view that in both types of activities one of the goals of MCLE is not addressed, namely the goal of creating a learning environment where lawyers meet with other lawyers from outside their firms, with whom they might not otherwise interact, to share an educational experience.

In trying to balance its recommendations the Subcommittee considered whether the unintended impact of its in-house recommendations would be to deter firms from continuing, or beginning, to develop in-house programs. The Subcommittee was of the view that whereas it could not predict whether this would happen, and should not presume to do so, the relatively modest 30 credit hours of CLE over 3 years it is suggesting should minimize the impact on in-house education, which tends to involve many more hours than this per year.

- The Clinical Funding Committee which, is responsible for the administration of the community legal clinic system, sent a submission outlining why its lawyers should be entitled to meet all their credits through the province-wide clinic training programs. There are 72 legal clinics across the province employing, among other staff, 175 lawyers.

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The Subcommittee has recommended that government lawyers (including clinic lawyers) be permitted to meet 1/2 of their MCLE credits through in-house training as set out on pages 40-41 of Appendix C. The Clinical Funding Committee submission

- describes in detail the extensive regional training programs that exist for clinic lawyers;
- emphasizes that clinic lawyers do such specialized work that there is insufficient public CLE relevant to their work;
- discusses the limited budgets for training and describes how clinic training programs provide relevant education at an affordable cost; and
- states that the training programs are not really in-house. Each clinic operates under different boards of directors and as such the clinic system should not be looked at in the same way as an individual law firm.

The clinic funding submission requests that clinic lawyers be entitled to satisfy all MCLE requirements through their training programs.

In responding to the submission it was pointed out that in-house training has to be balanced against one of the goals of MCLE, namely that a minimum commitment to public education be part of every lawyer's professional life. The coming together of clinic lawyers from different parts of the province does not, in the Subcommittee's view, satisfy that goal entirely since the essential perspective and focus of the participants is the same.

When it considered the issue of government and in-house clinic education the Subcommittee was prepared to permit a certain portion of requirements to be met through in-house training to acknowledge the specialized focus of these lawyers. In view, however, of the relatively modest requirement that lawyers take 30 credits of education over 3 years and assuming the development of recommendations 1, 2, and 3, the Subcommittee was not persuaded that clinic lawyers would not be able to find 15 hours of relevant education outside of the clinic system.

.....

A debate followed.

It was moved by Mr. Millar, seconded by Mr. Banack that Recommendations 1, 2 and 3 (pages 12 to 24 of the Report) be adopted.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	For
Angeles	For
Armstrong	For
Backhouse	For
Banack	For
Bobesich	Against
Carpenter-Gunn	For
Cole	For
Crowe	For
DelZotto	For
Epstein	For
Feinstein	For

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Gottlieb	Against
Harvey	For
Legge	For
MacKenzie	For
Manes	For
Marrocco	For
Millar	For
Murray	For
O'Connor	For
Ortved	For
Puccini	For
Ross	For
Sachs	For
Scott	For
Sealy	For
Strosberg	For
Swaye	For
Thom	Against
Topp	For
Wilson	For
Wright	For

Convocation took a brief recess at 10:35 a.m. and resumed at 10:50 a.m.

The debate on the MCLE Report continued.

It was moved by Mr. Gottlieb, seconded by Mr. Aaron that an Option 3, that M.C.L.E. not be made mandatory be added to Recommendation 4.

Lost

ROLL-CALL VOTE

Aaron	For
Adams	Against
Angeles	Against
Armstrong	Against
Backhouse	Against
Banack	Against
Bellamy	Against
Bobesich	For
Carey	Against
Carpenter-Gunn	Against
Cole	For
Copeland	For
Cronk	Against
Crowe	For
DelZotto	For
Epstein	Against
Feinstein	Against
Gottlieb	For
Harvey	Against
Legge	Against
MacKenzie	Against
Manes	Against
Marrocco	For
Millar	Against
Murray	Against
O'Connor	Against

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Ortved	Against
Puccini	For
Ross	Against
Ruby	Against
Sachs	Against
Scott	Against
Sealy	Against
Strosberg	Against
Swaye	Against
Thom	For
Topp	For
Wilson	For
Wright	For

Mr. DelZotto challenged the Treasurer's ruling that Option 1 and 2 be voted on separately.

A vote was taken and the Treasurer's ruling was upheld.

Motion - Option 2

It was moved by Mr. Millar, seconded by Mr. Banack THAT Convocation approve the introduction of mandatory continuing legal education with implementation of such program to occur in January 1999. During the period preceding that date initiatives set out in the action plans under Recommendations 1, 2 and 3 be investigated, pursued and reported on. In addition, the administrative structure for MCLE be fully determined, communicated to the profession, and made ready for introduction.

Lost

ROLL-CALL VOTE

Aaron	Against
Adams	Against
Angeles	For
Armstrong	Against
Backhouse	For
Banack	For
Bellamy	For
Bobesich	Against
Carey	For
Carpenter-Gunn	Against
Cole	Against
Copeland	Against
Cronk	For
Crowe	Against
DelZotto	Against
Epstein	For
Feinstein	For
Gottlieb	Against
Harvey	Against
Legge	Against
MacKenzie	Against
Manes	Against
Marrocco	Against
Millar	For
Murray	For
O'Connor	For
Ortved	Against
Puccini	Against
Ross	Against

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Ruby	Against
Sachs	Against
Scott	Against
Sealy	Against
Strosberg	For
Swaye	Against
Thom	Against
Topp	Against
Wilson	Against
Wright	Against

MOTION - OPTION 1

THAT the decision on the introduction of mandatory continuing legal education be deferred until the fall of 1998. During the period preceding that date initiatives set out in the action plans under Recommendations 1, 2 and 3 be investigated, pursued and reported on.

Carried

ROLL-CALL VOTE

Aaron	Against
Adams	For
Angeles	Against
Armstrong	For
Backhouse	For
Banack	For
Bellamy	For
Bobesich	Against
Carey	For
Carpenter-Gunn	For
Cole	Against
Copeland	Against
Cronk	For
Crowe	Against
DelZotto	For
Epstein	For
Feinstein	For
Gottlieb	Against
Harvey	For
Legge	For
MacKenzie	For
Manes	For
Marrocco	For
Millar	For
Murray	For
O'Connor	Against
Ortved	For
Puccini	Against
Ross	For
Ruby	For
Sachs	For
Scott	For
Sealy	For
Strosberg	For
Swaye	For
Thom	Against
Topp	For
Wilson	For
Wright	For

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

The Treasurer and Benchers had as their guests for luncheon, the Fox Scholars, Jessica Walker and Zoe Lane-Smith.

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

The Treasurer, Aaron, Angeles, Armstrong, Backhouse, Banack, Bellamy, Bobesich, Carpenter-Gunn, R. Cass, Cole, Copeland, Cronk, Crowe, DelZotto, Epstein, Feinstein, Gottlieb, Lawrence, MacKenzie, Manes, Marrocco, Millar, Murray, O'Connor, Ortved, Pepper, Puccini, Ruby, Sachs, Scott, Sealy, Strosberg, Thom, Wardlaw, Wilson and Wright.

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IN PUBLIC

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CEO'S FOURTH QUARTER REPORT TO CONVOCATION

The CEO presented the Fourth Quarter Report to Convocation accompanied by a slide presentation entitled Changes, Results, Goals: Law Society Operations, 1995 - 1997.

I. General overview of developments, initiatives and results

he following information along with a booklet entitled *Law Society Program Overview* and the text of the CEO's slide presentation entitled *Changes, Results, TGoals: Law Society Operations, 1995-1997* forms the corpus of the CEO's fourth quarter report. The material continued herein summarizes important developments and compliance with Executive Limitations Policies during the period October 1 to December 31, 1996.

A. Education

Articling

Of the 1,149 students who began articling in September, 1996:

- ▶ 97 percent secured a permanent remunerative position
- ▶ 1 per cent volunteered or articulated for little pay while continuing to search for a permanent, paying position
- ▶ just under 2 per cent--representing 17 students--remained unplaced. The percentage of unplaced students has remained the same over the last three years.

The Society's articling vacancy list currently advertises 22 positions, 10 of which are regular articling positions and 12 are voluntary positions to assist students to get their articles underway.

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Applications filed by 1,051 students registering for Phase One of the bar admission course set to begin in the summer of 1997 indicate that 77 per cent--or 805 students have secured articles for September 1997 while 23 per cent --or 237 students-- continue to seek a position. The percentage of unplaced students is up by four per cent from recent years. Students seeking articles will be registered with the Placement Service and will be tracked over the coming months. Regular progress reports will continue to be submitted to the Admissions and Equity Committee.

Queen's and LSUC cooperate on legal education initiative

Following approval by the Law Society earlier this month, Queen's University law school will begin offering a new cooperative program with its school of urban and regional planning. Graduates of the five-year program will earn both a combined LL.B and M.PL degree. The program requires students to complete two placement terms of four and eight months each under the supervision of practising lawyers approved by the Society and Queen's. The placement terms satisfy the articling requirements.

This is the second Queen's University co-operative program approved by the Law Society. The first program was approved in September 1996, and is jointly offered by Queen's law faculty and its school of industrial relations. In order to receive Law Society approvals, Queen's University has satisfied a series of specific requirements prescribed by Convocation.

Continuing Legal Education

A number of key CLE programs are currently under development. 1997 is expected to be a watershed year in real estate practice as title insurance issues and the electronic registration of interests in real property assume new importance.

Date	Program
March 6	<i>The Law Firm Behind the WebSite</i> <ul style="list-style-type: none">• will coach registrants in the strategic design of firm websites
April 7-19	<i>Bar-Ad Intensive</i> <ul style="list-style-type: none">• a refresher course in "bread and butter" areas of law
May 1	<i>Lone Stars</i> <ul style="list-style-type: none">• will address the particular challenges faced by sole practitioners
May 6	<i>Title Insurance</i>
October 24	<i>From Pen to Pentium: Electronic Registration</i>
Fall 1997	<i>Personal Injury Law and Practice</i> <i>Special Lectures--1997</i>

B. Secretariat

Complaints

A total of 4,510 complaint files were opened in 1996 representing a decrease of approximately 7 per cent over the previous year. End of year results confirm the continuation of a downward trend that began in 1994 and has seen complaints decline by 22 per cent over a three year period.

By shifting the emphasis from treating all complaints as matters requiring investigation to pursuing constructive alternatives to formal investigation in appropriate situations, the number of complaint files has been substantially reduced. The corresponding shift in department resources toward remedial initiatives will continue in 1997.

Discipline

In 1996, the total number of discipline complaints and applications heard and disposed of by committee and Convocation numbered 382 affecting 296 solicitors. At Convocation 197 complaints were heard and disposed of affecting 116 solicitors. The most frequent discipline penalty was suspension. Convocation ordered 59 solicitors suspended, 18 disbarred and granted 11 solicitors permission to resign.

A comparison of statistics for the discipline department for the years 1995 and 1996 shows a significant reduction in the number of matters authorized and referred to the discipline department. In 1995, 569 matters were authorized. In 1996, 419 matters were authorized and referred to discipline. This difference is explained by the reduction in the number of Form 2 filings authorized by the Discipline Committee. It was decided that Form 2 filings would not be authorized as discipline complaints if the solicitor has been suspended administratively or through the discipline process for more than one year. This accounts for a reduction of approximately 75 matters from the previous year.

The reduction in numbers of matters referred to discipline is also explained by the fact that the volume of public complaints to the Law Society has fallen by over 20 percent since 1993. Further, in 1996, both the audit and complaints' departments have implemented new systems to screen complaints that have resulted in fewer complaints being directed to the Discipline Committee for authorization.

Practice Review Program

Currently 164 lawyers are authorized to participate in the Practice Review Program. On average, 40 staff attendances per month were scheduled for the last quarter of 1996.

The English-language version of the Criminal Defence Practice Checklist has been printed and distributed. The checklist is being mailed to the 2,100 members of the profession who indicated on their fees form that criminal law constitutes 10 per cent or more of their practice. Copies in both English and French are available on request to all members of the profession. A copy will also be accessible on the Law Society's website.

link: Lawyers' Assistance Program

The most recent statistical data available for the LINK program covers the period July 1 to September 30, 1996. Statistics indicate that just over one per cent of the Ontario legal profession make use of LINK-- the typical utilization rate for an externally-provided assistance program.

LINK User Data

Firm Status	Employee/Associate in Law Firm	41.4%
	Sole Practitioner	29.3%
	Employed - Other	13.8%
	Student	8.6%
	Unemployed	5.2%
	Partner	1.7%
# of Years in Practice	1st year	19%
	2 - 5	34.5%
	6 - 10	25.9%
	more than 10	20.7%
Geographic location	Toronto	63.8%
	Southwestern & Golden Horseshoe	15.5%
	Central	10.6%
	Eastern	8.6%
	Northern	1.7%
Area of Law	Civil Litigation	20.7%
	Family Law	19%
	Corporate/Commercial	17.2%
	Criminal	8.6%
	Other	34.5%

Practice Advisory

Over 9,000 requests for telephone advice were received by the practice advisory service during 1996. Forty two per cent of these requests were from sole practitioners, 41 percent from other members and the remaining 17 percent from law office staff. The largest single group of callers have been practising less than five years (33 per cent). However, nearly one in every five callers seeking advice from the service has been a lawyer for more than 20 years.

Advice was most frequently sought about the Rules of Professional Conduct (nearly 28 percent of calls). The most commonly referred to Rules were Rule 4 (confidentiality), Rule 5 (Conflicts), Rule 12 (advertising), Rule 8 (withdrawal of services), Rule 9 (fees), Rule 10 (the lawyer as advocate), Rule 13 (duty to report), and Rule 14 (courtesy and good faith).

C. information systems & libraries

County Libraries

Since May of last year, the CEO, the CIO and the Director of Libraries have met with nine county library committees and the executives of the respective county law associations in Peterborough, Ottawa, Goderich, Cobourg, Kingston, St. Catharines, Welland, London and Hamilton.

The purpose of the meetings was to canvass issues of concern regarding libraries. Many librarians have reported that the escalating cost of publications is hampering their ability to maintain comprehensive collections in the counties. Another significant challenge facing many of the county libraries is the lack of space for library facilities resulting from court house closings and renovations. One example of how we are now working with county libraries is taking place in Welland where the Society has launched a pilot for an electronic library utilizing QL and CD-ROM--space-saving electronic substitutes for books. The pilot will serve as a case study for the use of electronic media in other libraries.

Great Library

For many years the Great Library has been losing a significant number of books from its collection because the honour system has not functioned well. In order to remedy this situation, a new electronic security system has been installed in the library to prevent further loss. Also, with the implementation of the new on-line catalog system, space formerly occupied by the old card catalog system is being turned into a new member services desk. This service provides reference personnel, PC's for the catalog, and general information about the library.

Information Systems

The Information Systems Department has been working on an invoicing project designed to standardize all invoices issued by the Society and provide the capability to collect all receipts in the central cash office. The membership data base is also being re-programmed to collect the new information available from the new member forms. This will provide much quicker updating of the data base, more information for research and analysis as well as fewer data errors.

D. finance

Operational activities

- Invoices for 1997 fees have been issued to members on time.
- Annual filing function has been transferred to the audit department and is called the "Forms Filing Unit".
- Budget for 1997 presented and approved.
- Completed program review costing.

See Executive Limitations Policies for other financial matters.

E. Communications

Member publication survey results

In an effort to determine member needs and preferences with respect to information provided by the Law Society in its publications, the Society

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distributed a survey last fall to its members. Over 1,500 responses were received. Survey results, including comments from members, are attached at Tab 1.

In response to the findings, the Society has consolidated its publications into one magazine-type format. Content has been substantially enhanced to correspond more closely to member needs and preferences. The first issue of *The Ontario Lawyers Gazette* will premier next month as part of our bicentennial celebrations.

Bicentennial awards

To mark our 1997 bicentennial, the Law Society is presenting special awards to Ontario lawyers who have made outstanding contributions to their communities through volunteer and humanitarian work.

In total, 61 lawyers from across the province will receive the Law Society of Upper Canada's 1997 Bicentennial Award of Merit. The recipients were nominated by their county law associations and chosen as winners by a committee made up of the Law Society Treasurer, Susan Elliott; the chair of the Society's bicentennial committee, Tom Carey; the president of the County and District Law Presidents' Association, Harrison Arrell; and the president of the Metropolitan Lawyers' Association, Eva Frank.

Congratulations to the recipients (listed below) and our thanks for their commitment to giving something back to their communities:

Algoma Law Association:

↪selection pending

Brant Law Association:

↪Lawrence T. Pennell

Bruce Law Association:

↪George Cecil Loucks, Q.C

Carleton Law Association:

↪Thomas Campbell Barber

↪Donald Gordon Grant

↪Jacqueline Mary Huston

Cochrane Law Association:

↪Rino Charles Bragagnolo, Q.C.

Dufferin Law Association:

↪Howard Clark Adams, Q.C.

Durham Law Association:

↪Robert Arthur Alexander

Elgin Law Association:

↪Murray Joseph Hennessey

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Essex Law Association:

- ⇨ John Douglas Lawson, Q.C.
- ⇨ Marion Elaine Overholt

Frontenac Law Association:

- ⇨ Geraldine Rose Tepper

Grey Law Association:

- ⇨ David Lawrence Lovell

Haldimand Law Association:

- ⇨ selection pending

Halton Law Association:

- ⇨ selection pending

Hamilton Law Association:

- ⇨ Harrison Sawle Arrell
- ⇨ Stanley Morris Tick, Q.C.

Hastings Law Association:

- ⇨ William Charles King

Huron Law Association:

- ⇨ Justice Francis Gerard Carter

Kenora Law Association:

- ⇨ Jack Kenneth Doner

Kent Law Association:

- ⇨ Thomas Charles Odette, Jr., Q.C.

Lambton Law Association:

- ⇨ Robert Grant Murray, Q.C.

Lanark Law Association:

- ⇨ John Steele Kirkland

Leeds-Grenville Law Association:

- ⇨ Jane Thorburn Monaghan

Lennox-Addington Law Association:

- ⇨ William Alexander Grange

Lincoln Law Association:

- ⇨ Robert Stanley Kemp Welch, Q.C.

Lindsay Law Association:

- ⇨ selection pending

Middlesex Law Association:

- ⇨ Janet Elizabeth Stewart, Q.C.

Muskoka Law Association:

- ⇨ Michael Ernest Fitton, Q.C.

Nipissing Law Association:

- ⇨ Jack Andrew Wallace

Norfolk Law Association:

- ⇨ James Robert Tyrrell

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Northumberland Law Association:

↻Andrew Mowry Lawson

Oxford Law Association:

↻Murray Roy Borndahl

Parry Sound Law Association:

↻Watson Bruce Cunningham

Peel Law Association:

↻John Berton Keyser

↻Nancy Margaret Mossip

Perth County Law Association:

↻Wilfrid Palmer Gregory, Q.C.

Peterborough Law Association:

↻Walter Harold Howell, Q.C.

Prescott and Russell Law Association:

↻J.H.B. Michel Landry

Rainy River Law Association:

↻Lawrence Alexander Eustace

Renfrew Law Association:

↻Allan Archibald McNab

Simcoe Law Association:

↻Roderic Graham Ferguson

Stormont, Dundas & Glengarry Law Association:

↻Archibald Duncan McDonald

Sudbury Law Association:

↻Donald Peter Kuyek

↻Andre Lacroix

Temiskaming Law Association:

↻selection pending

Thunder Bay Law Association:

↻Nicholas John Pustina, Q.C.

Waterloo Law Association:

↻Robert Charles Pettitt

Welland Law Association:

↻selection pending

Wellington Law Association:

↻Terrence Bruce Jackman

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York County Law Association:

⇨ Igor Ellyn, Q.C.
⇨ Randy Allan Pepper
⇨ Mary Lou Fassel
⇨ Kazuo George Oiye, Q.C.
⇨ Bert Raphael, Q.C.
⇨ Margaret Juliana Atkinson
⇨ Lloyd William Perry
⇨ Loretta Zubas
⇨ John Paul Hamilton
⇨ Willson Alexander McTavish

York Region Law Association:

⇨ John Stewart Rogers

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

- (1) Survey results from members on member needs and preferences.
- (2) Report of the CEO's compliance with Executive Limitations.

GOVERNANCE RESTRUCTURING IMPLEMENTATION TASK FORCE REPORT

Purpose of Report: Information

Mr. Feinstein presented the Report on the Governance Restructuring Implementation Task Force which sets out the Benchers Program Review.

Governance Restructuring Implementation Task Force
January 24, 1997

Report to Convocation

Purpose of Report: Information Policy Secretariat

BENCHER PROGRAM REVIEW

The Governance Restructuring Implementation Task Force met on November 28, 1996, December 5, 1996 and January 9, 1997 to consider a process for the benchers program review. It wishes to report as follows.

A. PURPOSE OF THE BENCHER PROGRAM REVIEW

1. The program review will seek to achieve the following objectives:
 - 1) to increase Convocation's knowledge and awareness of the programs the Law Society of Upper Canada currently operates;
 - 2) to permit benchers to evaluate current programs against the Role Statement;
 - 3) to permit benchers to assess the relative value of each program and thereby start to consider future directions for the operation of the Law Society; and
 - 4) having assessed the direction of the Law Society, benchers can determine what, if any, other programs ought to operate.

B. PROGRAMS TO BE REVIEWED

2. The following programs will be reviewed.

- 1) Professional Conduct
- 2) Professional Standards
 - a) Practice Review Program
 - b) Requalification
 - c) Development of Standards (Checklists)
- 3) Link - Lawyer's Assistance Programme
- 4) Loss Prevention Education Program
- 5) Bar Admission Course
 - a) Education
 - b) Examinations
 - c) French Language Course
- 6) Articling
- 7) Practice Advisory
 - a) Confidential telephone advice line for members of the profession/mentoring.
 - b) Start-up Workshops
 - c) Systems adviser for members of the profession.
- 8) Continuing Legal Education
 - a) CLE Programs
 - b) Bursary Program
 - c) Publications
- 9) Specialist Certification
- 10) Financial Aid
 - a) For students in the Bar Admission Course.
 - b) For members.
- 11) Placement Assistance
 - a) For students.
 - b) For members.
- 12) Information Services
 - a) Great Library
 - (i) Reference and information services.
 - (ii) Document delivery services.
 - (iii) Ontario Reports.
 - (iv) Search Law
 - b) Archives
 - (i) external reference service.
 - (ii) Public Programs - building tours, exhibits
- 13) Lawyer Referral
- 14) Dial-a-law
- 15) Member Communications - Ontario Lawyers' Gazette, LSUC website.

C. PROCESS FOR THE PROGRAM REVIEW

3. Staff is currently compiling the following information about each of the above programs:

- 1) The genesis of the program, i.e. Convocation's own motion, committee recommendation, date of inception.
- 2) What the program is currently achieving - ranging from "unknown" to statistically ascertainable.
- 3) Whether any other organization provides a similar program.
- 4) Whether it is reasonable to expect any other organization to provide a similar program.
- 5) The financial cost of the program.
- 6) The number of people served by the program, if ascertainable.
- 7) Any trend in the program.
- 8) The extent to which the program addresses equity and minority group issues.

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- 9) The perceived impact of eliminating the program.
- 10) The role of French Language Services, if any, in the program.
- 11) The relationship of the program to the components of the role statement.*see below

*Components of the Role Statement

Governance

Public Interest

Interest of the Profession

Access to Legal Services

High standards of learning, competence and professional conduct

Independence of the legal profession

Integrity and honour of the legal profession

Justice and the rule of law

4. The Task Force is evaluating a number of options on how to proceed with the review. It is awaiting the receipt of the information from staff, and the outcome of Convocation's discussion of the policy matters arising from Committee meetings on January 9, 1997. A proposal for the process will be presented to Convocation for its consideration in March 1997.

THE REPORT WAS RECEIVED

GOVERNANCE MATTERS

FINANCE AND AUDIT COMMITTEE REPORT

Meeting of January 9, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND AUDIT COMMITTEE begs leave to report:

Your Committee met on Thursday the 9th of January, 1997, with the following Benchers in attendance:

R. Murray (Chair), V.C. Krishna, A. Ali Chahbar, T. Cole, E. DelZotto, G. H. T. Farquharson, A. Feinstein, P. Furlong, G. Gottlieb, J. Harvey, D. Murphy, P.B.C. Pepper, A. Scace, T. Stomp, G. Swaye, J. Wardlaw, R. Wilson and B. Wright.

Staff in attendance were J. Saso, W. Tysall, D. Carey, K. Corrick and R. White.

Others in attendance were R. Holden (Legal Aid), M. Strom, M. Heins (Lawyers' Professional Indemnity Company) and B. Graham (Coopers & Lybrand).

A.
APPROVALS

1. BENCHER DISBURSEMENTS

The Committee reviewed the 3 options presented in the reports from the Chief Financial Officer and from the Research Director [pages 1-7], and recommends that Rule 24, which governs reimbursement of expenses by benchers, be amended as set out in Option 1, as follows:

"Benchers are entitled to be reimbursed by the Society for disbursements and other out-of-pocket expenses incurred by them in the performance of their duties as benchers".

Option 3 also received some support from the Committee. Option 3 states that *"Benchers are entitled to be reimbursed for reasonable expenses incurred by their attendance at Convocation, committee meetings and other Society functions as requested by Convocation, by the Treasurer or by a chair of a committee".*

In addition, the Committee considered the procedural alternatives presented for claiming expenses and recommends Alternative 1, as stated:

"Submit an expense report to claim the actual expenses. To support the claim, all expenses other than incidental expenses shall be supported by receipts".

Note: Item deferred.

B.
INFORMATION

1. LEGAL AID AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED MARCH 31, 1996 AND QUARTERLY FINANCIAL STATEMENTS.

Robert Holden of Legal Aid attended the meeting. The Financial Statements were tabled with the Committee.

2. LAWYER'S PROFESSIONAL INDEMNITY COMPANY FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 1996.

Michelle Strom and Malcolm Heins attended the meeting to present to the Committee the nine months results of the Lawyer's Professional Indemnity Company [pages 8-34].

3. MANDATE OF THE FINANCE COMMITTEE WITH RESPECT TO REVIEWING LEGAL AID PLAN FINANCIAL INFORMATION.

The Committee discussed their mandate and recommends that the Chair of the Finance and Audit Committee, the Chair of the Legal Aid Committee and the Treasurer meet first to clarify the Committees' roles and then make recommendations to Convocation.

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4. BENCHER REMUNERATION.

The Committee discussed bencher remuneration and asked staff to prepare a paper outlining various options.

ALL OF WHICH is respectfully submitted

DATED this 24th day of January, 1997

R. Murray
Chair

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

- Item A.-1. - Copy of Memorandum from Ms. Wendy Tysall to the Chair and Members of the Finance and Audit Committee dated November 1, 1996 re: Bencher's expenses and copy of Memorandum from Mr. Andrew Brockett, Research Director dated November 6, 1996 re: Rule change: Bencher disbursements.
(pages 1 - 7)
- Item B.-2. - Copy of the Lawyer's Professional Indemnity Company Financial Statements for the nine months ended September 30, 1996.
(pages 8 - 34)

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

IN CAMERA REPORT

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

"IN CAMERA"

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

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IN PUBLIC

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The Item on Benchers Disbursements was deferred.

THE REPORT WAS ADOPTED

Suspensions

Motion - Errors and Omissions Insurance Levy

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid the Errors and Omissions Insurance Levy, and whose name appears on the attached list, be suspended from January 24, 1997 and until their levy is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

Motion - Membership Fee

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid the Membership Fee, and whose name appears on the attached list, be suspended from January 24, 1997 and until their fee is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

REVIEW OF POLICY ISSUES LISTS FROM COMMITTEES

Treasurer's Memorandum - January 16, 1997

The Treasurer presented the issues lists developed by the committees for review by Convocation.

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M E M O R A N D U M

To: All Benchers
From: Susan Elliott
Subject: Policy Issues Lists from Committees
Date: 2 April 1997

Attached are the issues lists developed by committees last committee day as well as a table which summarizes the twelve month work plan for Convocation. Please review the lists and the table and be prepared to deal at Convocation this month with the matters outlined in this memo.

COMMITTEE WORK PLANS AND ASSIGNMENTS

The policy issues lists begin our annual planning cycle by providing a work plan for both Convocation and its Committees for the next twelve months. The lists are not exhaustive.

Please review the lists and the table and be prepared to address the following questions:

1. Is there any other issue, not listed by a committee, which a benchers would suggest a committee review for Convocation in the next twelve months?
2. Is there an issue listed by a committee which a benchers feels ought not be reviewed at all by the committee?
3. Is there any issue in a committee list, which should be changed to either a greater or lesser priority, so that it is considered by Convocation either sooner or later than proposed?

If there are matters raised under any of the above, Convocation will be asked to determine whether to change a committee's work plan to reflect the amendment proposed.

TASK FORCES OF CONVOCATION

My review of the issues lists indicates there is currently interest in establishing two Task Forces, as outlined below. A Task Force is time-limited, deals with particular issues and requires a commitment of time and resources, including budget planning, beyond the normal standing committee.

Under our governing policies, all Task Forces must have clearly articulated Terms of Reference and a sunset clause. Membership is not restricted to benchers, although the chair and vice-chairs of any Task Force must be benchers.

To assist Convocation in deciding whether to proceed with the recommended Task Forces I will be asking that two small working groups of Convocation be established immediately to develop and refine the Terms of Reference for each proposed Task Force, including time lines, membership, preliminary budget, consultation process etc.

The two Task Forces which arise from the committee issues lists are as follows:

1. Competence Task Force

All three committees recommend that a Task Force be created to look at competence and determine the role of the Law Society with respect to competence in three major areas of regulation. Roughly speaking the areas of review would be:

- ▶ pre-call and entry level competence
(encompasses Bar Admission course, Articling requirements etc.)
- ▶ post-call competence
(how does the Society ensure the public is served by competent lawyers?)
- ▶ discipline and enforcement of competence
(is the discipline process the appropriate response to incompetence?)

The Terms of Reference working group for this Task Force will report at the February Convocation.

2. The Impact of Regulation on the Practice of Law Task Force

Two of the committees recommend creating a Task Force to deal with the difficult issues of the extent to which our regulatory scheme¹ (in particular the rules of professional conduct) affects the ability of lawyers to provide the public with a full range of services. The third committee raises part of this discussion as one of the issues it identifies.

A related concern to the general regulatory impact are the issues of how and to what extent the Society should enforce norms of behaviour through the complaints and discipline process as opposed to maintaining a broader responsibility to members generally and the public at large.

Included within this Task Force could be the question of how and to what extent the Society should assist lawyers who are suffering economically. The demographic information requested by the report on Member Services and Regulation adopted by Convocation, November 29, 1996 will help answer this question.

The Terms of Reference working group for this Task Force will report at the March Convocation.

¹ This includes what has been described as the "appropriate border line" around the field of law and also a review of rules which prevent multi-disciplinary law firms, inter-provincial law firms and other ways of practicing law. Rules with respect to advertising, fee splitting and steering are also within the scope of such a review.

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PROPOSED POLICY ISSUES AGENDA FOR CONVOCATION
AS OF JANUARY 15TH, 1997

(This table contains those policy issues with known dates only, as well as dates for the budget process as reported by the Finance & Audit Committee)

Convocation Date	Policy Issue	Committee of Origin	Group Assigned to develop issue for Convocation
Feb. '97	Competence Task Force (Terms of Ref.)	A & E Prof. Development Prof. Regulation	Working Group of Convocation to develop Terms of Reference
March '97	Regulatory Impact on the Profession (Terms of Ref.)	Prof. Regulation Prof. Development	Working Group of Convocation to develop Terms of Reference
March '97	Budget Planning Process	Finance & Audit	Committee
March '97	Review of Reports on Civil Justice	Prof. Development	Working Group
April '97	Rules for Discipline "tracks"	Prof. Regulation	Working Group
April '97	NCA Students	A & E	Committee
April '97	Equity/Access Issues - action plan	A & E	Committee
April '97	Transitions II	A & E	Working Group & Committee
May '97	Duty Counsel at panel hearings	Prof. Regulation	Committee
May '97	Reprimands	Prof. Regulation	Working Group
September '97	County Library - funding issues	Prof. Development	Working Group
November '97	Budget Approval - Final	Finance & Audit	Committee

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ADMISSIONS & EQUITY COMMITTEE

Issues	Commentary	Proposed Assignment	Time Line
Entrance Requirements to the Ontario Bar (High Priority)	In furtherance of its role to ensure that lawyers meet high standards of learning, competence, and professional conduct the Committee proposes to undertake an examination of what the admission requirements to the Ontario Bar should be, including a) an appropriate definition for entry level competence; b) the Law Society's role in admissions including: (i) continuing to deliver a Bar Admission Course; (ii) setting standards for admissions and delegating delivery of the program; or (iii) setting standards for admissions and administering examinations for admissions; c) the kind of Course the Society might continue to deliver (this assumes that (a) has been answered); d) the criteria to assess the success of any revised Course; e) articling requirements and options and possible alternatives to traditional requirements; and f) issues related to the interaction between law school requirements and the Law Society's requirements.	Task Force (to be composed of benchers and representatives of other constituencies)	12 - 18 months for the Task Force to complete a report. At March Convocation the Committee will provide a detailed proposal for: a) Terms of Reference b) Membership in the Task Force c) A proposed budget (including possible consultants' costs)
French language component of the Bar Admission Course	In furtherance of its mandate to develop, for Convocation's approval, policies for a fair, open, and equitable accreditation process, the Committee proposes to evaluate the effectiveness of the French language component of the Bar Admission Course.	working group	To be determined.
Issues	Commentary	Proposed Assignment	Time Line

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<p>Report on the Accreditation of Foreign Trained and Quebec Trained Lawyers (Gavin MacKenzie)</p> <p>(High Priority - has been an outstanding issue since last year)</p>	<p>In furtherance of its mandate to develop, for Convocation's approval, policies for a fair, open, and equitable accreditation process the Committee proposes to complete the process begun for reviewing the system in place for accrediting foreign trained and Quebec trained lawyers and the Law Society's role in the National Committee of Accreditation (NCA).</p> <p>The Committee recommends that to complete the process it will</p> <ul style="list-style-type: none"> a) review the final report; and b) provide Convocation with the final report (incorporating a section on the comments received) and possible options for Convocation respecting the recommendations. 	<p>Committee</p>	<p>The revised report will be provided to the Committee in March.</p> <p>The report and options will be provided to Convocation in April.</p>
<p>Transitions Report</p> <p>(High Priority - an ongoing issue)</p>	<p>In furtherance of its mandate to develop policies, for Convocation's approval, to promote equity in legal education and practice, the former Women in the Legal Profession Committee undertook to follow up on the <i>Transitions in the Legal Profession Report (Ontario Transitions Re-contact Survey)</i>. The follow-up report is complete and a January 15 meeting of the former Women in the Legal Profession Committee is scheduled to discuss the report.</p> <p>The Committee proposes to develop a plan of action and recommendations relating to the findings of the Transitions follow-up.</p>	<p>Committee</p>	<p>In April the report will be tabled and recommendations provided for Convocation's consideration.</p>
<p>Policy</p>	<p>Commentary</p>	<p>Proposed Assignment</p>	<p>Time Line</p>

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Equity/Access Issues (High Priority-ongoing issue)	<p>In furtherance of its mandate to develop, for Convocation's approval, policies to promote equity in legal education and practice, the Committee has identified areas for policy development.</p> <p>The Committee proposes to consult with the Equity Advisory Committee to develop a plan of action for Convocation's consideration in the coming months.</p>	Committee	<p>Committee to consider issues in February/March.</p> <p>To provide Convocation with a plan of action, including cost assessments, in April.</p>
Inter-Provincial Mobility of Lawyers and Law Firms (Not for immediate action)	<p>In its role of developing policies for Convocation respecting admission and practice in Ontario, the Committee considers that the issue of inter-provincial mobility, and temporary "practice" in Ontario by non-members is one that should be addressed, when and if the amendments to s.50 of the <i>Law Society Act</i> are enacted giving Convocation authority to consider the issue.</p>	Committee	<p>Not for Convocation's immediate agenda.</p>

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE
ISSUES LIST, January 9, 1997

ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	TIME LINE
LIST A - HIGH PRIORITY			
<p>1. The Committee is concerned with the following issues in relation to the professional competence of lawyers:</p> <p>a) What does the Law Society mean by the term <i>competence</i> in its Role Statement?</p> <p>b) What steps should the Law Society take to ensure that the people of Ontario are served by lawyers who meet high standards of competence?</p> <p>c) What steps should the Law Society take to monitor the competence of its members and offer quality assurance for the public?</p>	<p>The Committee considers that substantive issues of the Law Society's mandate in relation to competence require examination on an urgent basis. For example, consideration of <i>professional competence</i> is relevant to the following Law Society issues:</p> <p style="padding-left: 40px;">discipline for incompetence; Bar Admission standards; post-call legal education; standards for accreditation of foreign-lawyers; the objectives of requalification.</p> <p>A joint meeting of the Professional Development and Competence Committee and the Admissions and Equity Committee (on October 10, 1996) began consideration of alternative definitions of competence. A definition of competence will be the preliminary step for consideration of substantive issues. However, the issue of defining competence and the issues of the Law Society's mandate with respect to competence cut across the fields of responsibility of other Committees besides Professional Development and Competence.</p>	A Task Force reporting to Convocation	Promptly; a 12-18 month project

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ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	TIME LINE
<p>2. Review of the Canadian Bar Association <i>Systems of Civil Justice Task Force Report</i> and the Ontario <i>Review of Civil Justice</i>, to establish their implications for the Law Society as a regulatory body.</p>	<p>Recommendations of both reports are to be reviewed and the issues relevant to the Law Society are to be identified by a working group and reported to the Committee with recommendations for further consideration of certain areas in depth. Some general areas anticipated for consideration include:</p> <ul style="list-style-type: none"> - alternative dispute resolution - a full review (with outside bodies) of the content of legal education in Ontario - public interest issues including clients' rights and responsibilities and lawyers' billing practices - professional competence - <i>pro bono</i> work carried out by lawyers 	<p>A working group to review Reports and report to Committee with proposals for considering issues relevant to the Law Society.</p>	<p>Underway immediately with preliminary report to Committee in March and information report to Convocation same month.</p>

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ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	TIME LINE
<p>3. County and District Law Libraries. The principal issues fall in three areas:</p> <p>a) Funding issues</p> <p>b) Technological issues</p> <p>c) Government policies</p> <p>The sub-areas for 3(a) are:</p> <p>(i) a distribution formula</p> <p>(ii) retention of certain funds</p> <p>(iii) sources of funding and the Topp Report.</p> <p>For 3(b):</p> <p>the assessment of future technological and other needs for constituent library groups.</p> <p>For 3(c) noting that Government policies will result in reduction in space for some libraries and closure for a few,</p> <p>(i) what is to be done in response to this situation?</p> <p>(ii) is the issue of library space symptomatic of broader issues underlying the <u>government's approach to the legal system?</u></p>	<p>During Committee discussions on County and District Law Libraries on November 14, 1996, and January 9, 1997, the decision was made to establish two working groups:</p> <p>A) a working group on funding issues relating to County Libraries [issue 3(a)].</p> <p>B) a working group on technological and other future issues facing County Libraries [issue 3(b)].</p> <p>The funding areas under issue 3(a) are as follows:</p> <p>(i) the development of an acceptable distribution formula for funds collected by the Law Society for County libraries</p> <p>(ii) the question of how a portion of the annual funds collected for libraries by the Law Society could be retained and used for technological or other projects for the libraries.</p> <p>(iii) the resolution of the policy question presented by the Topp Report¹ on County and District Law Libraries, namely whether the present dual funding system (consisting of local members fees for use of County Libraries and central grants made from a portion of Law Society member fees) should be replaced by a single grant with the libraries supported solely by member fees.</p> <p>Issue 3(c) may be included in the mandate of the working group on technology.</p>	<p>Two working groups reporting to the Committee</p>	<p>Report to Convocation re funding issues by September, 1997</p>

¹ The Topp Report refers to the Report of the County Library Review Subcommittee to the Libraries and Reporting Committee, adopted by Convocation on 28 April, 1995.

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ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	TIME LINE
<p>4. One main policy issue underlies the Eberts-Ross motion: Is the Law Society solely concerned with enforcing norms of behaviour through the complaints and discipline process, or does it have a broader responsibility to its members generally, or particular groups within its membership?</p> <p>If it does have such responsibility, what sorts of activities are appropriately included in it?</p>	<p>The Eberts-Ross motion sprang from a concern among benchers early in 1996 for members of the profession who were suffering financial or other hardships during the economic recession.</p> <p>A staff report on the Eberts-Ross motion was adopted by Convocation on November 29, 1996 and Convocation voted to disseminate and distribute information on Law Society services that might assist members who are suffering hardship to all members and to the general public, where they might benefit from the information, and to do so on a regular basis.</p>	<p>Full Committee</p>	<p>The Committee initially proposed an information report to Convocation in May with final report in November, 1997. But the exact timing for these issues will be determined when the timing of the availability of demographic information is established.</p>

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ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	TIME LINE
5. Post-call learning for lawyers	<p>The future development of post-call learning for lawyers will depend on the outcome of consideration of the Report and Recommendations of the Mandatory Continuing Legal Education Subcommittee, to be debated in Convocation on January 24, 1996.</p> <p>The Professional Development and Competence Committee will potentially be charged with the task of discussing implementation procedures for any decisions made by Convocation.</p>	<p>The Committee has set up a working group to evaluate the implications of any decisions made; the group is to begin work after January 24.</p>	<p>Report to Committee in February with proposal defining issues and suggesting approaches.</p>
LIST B - MEDIUM PRIORITY			

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ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	TIME LINE
1. Should a program of Specialist Certification be continued by the Law Society? If so, should post-call education be a requirement for Specialist Certification?	<p>The purpose of the Specialist Certification program is to allow the public to identify lawyers who have special ability and extensive experience in a field of law.</p> <p>The accreditation program was begun in 1986 and seems not to have been reviewed since that time.</p> <p>The Committee suggests that a review of the program is overdue and that it could be undertaken promptly by staff on the basis of existing material and reports.</p>	Full Committee	As soon as possible, to avoid uncertainties around the program.

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PROFESSIONAL REGULATION COMMITTEE

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
<i>LIST A - HIGHEST PRIORITY</i>					

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
1.	<p>(a) Policy discussion on the extent to which the impact of economic circumstances or the particular status of a lawyer should be considered in applying the regulatory scheme. In particular:</p> <ul style="list-style-type: none"> • whether the disciplinary process should be triggered for every breach of conduct • whether guidelines should be developed to determine the appropriate discipline stream for a matter (eg. the "serious breach" stream or the "administrative offence" stream) 	<p>This issue is not confined to the jurisdiction of the Committee, given the broader examination of the Society's response to the economic or emotional needs of the profession, which has begun with the material presented to Convocation on November 29, 1996 on Member Services and Regulation.</p> <p>The subject may encompass a review of what the Society disciplines members for, in the context of the regulatory scheme. Questions may include:</p> <ul style="list-style-type: none"> • whether certain cases could be diverted from discipline where discipline is triggered as a result of economic or personal pressures • should the process respecting filings and disciplinary response be re-examined, and should non-practising members be disciplined for failing to file. <p>Some process reforms have been pursued, and as an example, the legislative reform package includes the summary suspension authority through a single bench (no hearing required) to suspend members for failing to file, and a single Proceedings Authorization Committee for matters in the discipline, incapacity or professional competence streams.</p>	Joint Task Force with Professional Development and Competence Committee	Policy	3 months

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
1.	(b) Development of policies for the Society's response to changes in the marketplace/business world and how they are affecting the profession. Topics include the following: <ul style="list-style-type: none"> the impact on the profession of other providers of "legal services" and how that affects lawyers' historical monopoly on legal services the appropriate border line around the "field" of lawyers (eg. paralegals, alternate dispute resolution practitioners, mediators, arbitrators) provision of legal services through multi-disciplinary partnerships¹¹ limited liability law partnerships²² regulation of the unauthorized practice of law the Society's budget for unauthorized practice prosecutions (outside counsel)³³- the affordability question vs. the need to prosecute professional use of the license to practice law the purpose and effect of rules on 	Policy questions include: <ul style="list-style-type: none"> the application of statutory provisions to prosecute for unauthorized practice how the Society can address or respond appropriately, with available resources, to initiatives of others who enter the "field" of lawyers, but who are unregulated and may not provide services from the public-interest perspective of lawyers what the Society should be regulating in connection with the practice of law whether discipline is an appropriate response to all situations arising from reaction to market conditions A broader question is whether the rules and regulations governing how a lawyer may structure or carry out a practice are too restrictive, given that many of them were drafted when competition for the field of	Task Force	Policy	3 months

¹The Committee's review of this subject in November 1996 resulted in direction to staff to provide information on how such partnerships could be structured, in the context of the current regulatory regime which effectively prohibits such partnerships.

²The Ontario government is preparing draft legislation which, according to recent information, was to be available in the next 2 to 3 months. It appears that the legislation has all-party support and that the government will move quickly on it, which will likely give the Society a short time frame in which to comment.

³This issue also relates to the budget for outside counsel generally.

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The Law Society of Upper Canada Archives
Dec. 10, 2009

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
1.	(b) Development of policies for the Society's response to changes in the marketplace/business world and how they are affecting the profession. Topics include the following: <ul style="list-style-type: none"> the impact on the profession of other providers of "legal services" and how that affects lawyers' historical monopoly on legal services the appropriate border line around the "field" of lawyers (eg. paralegals, alternate dispute resolution practitioners, mediators, arbitrators) provision of legal services through multi-disciplinary partnerships¹¹ limited liability law partnerships²² regulation of the unauthorized practice of law the Society's budget for unauthorized practice prosecutions (outside counsel)³³- the affordability question vs. the need to prosecute professional use of the license to practice law the purpose and effect of rules on solicitation, steering and fee advertisements (Rule 12) 	Policy questions include: <ul style="list-style-type: none"> the application of statutory provisions to prosecute for unauthorized practice how the Society can address or respond appropriately, with available resources, to initiatives of others who enter the "field" of lawyers, but who are unregulated and may not provide services from the public-interest perspective of lawyers what the Society should be regulating in connection with the practice of law whether discipline is an appropriate response to all situations arising from reaction to market conditions A broader question is whether the rules and regulations governing how a lawyer may structure or carry out a practice are too restrictive, given that many of them were drafted when competition for the field of legal services was different from today.	Task Force	Policy	3 months

¹The Committee's review of this subject in November 1996 resulted in direction to staff to provide information on how such partnerships could be structured, in the context of the current regulatory regime which effectively prohibits such partnerships.

²The Ontario government is preparing draft legislation which, according to recent information, was to be available in the next 2 to 3 months. It appears that the legislation has all-party support and that the government will move quickly on it, which will likely give the Society a short time frame in which to comment.

³This issue also relates to the budget for outside counsel generally.

24th January, 1997

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
2.	Development of a policy on whether the Society should discipline for incompetence	<p>Rule 2 prosecutions currently focus on the quality of service, but are not usually founded on issues of incompetency. The question of a level of competence as a test for invoking the Society's discipline authority is intimately connected to the development of a definition of competency (currently underway) and standards of competency. This necessarily takes the issue out of the exclusive jurisdiction of the Committee.</p> <p>The legislative reform package includes provision for the granting by the Proceedings Authorization Committee of a hearing for a "professional competency order" where a member fails to meet standards of competency. The order can include terms and conditions to be imposed on the member to address such inadequacies.</p>	Joint Task Force with Professional Development and Competence Committee	Policy	3 months
3.	Making duty counsel available for members at discipline hearings	Currently, the Society provides duty counsel to members who are unrepresented at Convocation, and that initiative has been very successful. The question is whether there is a need to make the same assistance available at the Discipline Committee level, and, if so, whether a workable scheme could be developed, given the significant time commitment required at the hearing stage.	Committee	Policy	3 months

24th January, 1997

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
4.	<p>Development of a policy on:</p> <ul style="list-style-type: none"> • Reprimands in the absence of the lawyer • general "technology and the discipline process" question 	<p>A case pending before Discipline Convocation has been adjourned to await the Committee's review of the first part of this issue.</p> <p>The current legislative reform package includes amendments which would allow a reprimand to be provided in writing.</p> <p>The technology issue, of which the reprimand issue is a sub-issue, may involve a review of policy issues arising from, for example, conducting hearings or Invitations to Attend by telephone or through video hook-up.</p>	Working Group (for reprimand issue as a start)	Policy	2 months

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The Law Society of Upper Canada Archives
Dec. 10, 2009

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
5.	<p>Review the use of current procedural rules for discipline hearing "tracks" in light of the development of procedures which effectively supersede the rules.</p> <p>This procedural issue overlaps with the policy issue identified in 1. above, in that the subject of the charge will often determine the appropriate "track". A review of the application of the discipline process as a response to certain situations may have an effect on how the hearing process itself is structured.</p>	<p>The "tracks" were established in 1992 in response to a need for time limitations that would govern the discipline process. Current pre-hearing/hearing procedures and administrative systems are designed to efficiently schedule hearing dates and ensure appropriate movement of case loads. As such, the tracking procedures are redundant and, as a challenge has already been raised by a lawyer for failure to "comply" with the tracking timetable, a review is required.</p> <p>An issue earlier identified by the Committee in September 1996 focussed on who should establish rules of procedure for discipline and administrative hearings. While to an extent, the procedures are prescribed in the statute and regulations, and other provisions such as those in the <i>Statutory Powers Procedure Act</i> apply, the Committee's review of procedures may touch on this question.</p> <p>The legislative reform package includes a provision in the <i>Law Society Act</i> whereby Convocation may make rules of practice and procedure for discipline and other proceedings.</p>	Working Group	Procedural	1 month (from date of staff report)

24th January, 1997

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
5.	<p>Review the use of current procedural rules for discipline hearing "tracks" in light of the development of procedures which effectively supersede the rules.</p> <p>This procedural issue overlaps with the policy issue identified in 1. above, in that the subject of the charge will often determine the appropriate "track". A review of the application of the discipline process as a response to certain situations may have an effect on how the hearing process itself is structured.</p>	<p>The "tracks" were established in 1992 in response to a need for time limitations that would govern the discipline process. Current pre-hearing/hearing procedures and administrative systems are designed to efficiently schedule hearing dates and ensure appropriate movement of case loads. As such, the tracking procedures are redundant and, as a challenge has already been raised by a lawyer for failure to "comply" with the tracking timetable, a review is required.</p> <p>An issue earlier identified by the Committee in September 1996 focussed on who should establish rules of procedure for discipline and administrative hearings. While to an extent, the procedures are prescribed in the statute and regulations, and other provisions such as those in the <i>Statutory Powers Procedure Act</i> apply, the Committee's review of procedures may touch on this question.</p> <p>The legislative reform package includes a provision in the <i>Law Society Act</i> whereby Convocation</p>	Working Group	Procedural	1 month (from date of staff report)

24th January, 1997

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
<i>LIST B - MIDDLE PRIORITY</i>					
1.	Development of a disclosure policy for disciplinary hearings	Current disclosure policy dates back to recommendations in the Yachetti report on discipline procedures, and more recently, Crown disclosure policies. Issues have recently arisen about work product and privilege, requiring a further review of disclosure policies. While a response is currently formulated for these issues on a case by case basis, a policy would assist counsel and discipline panels.	Committee	Procedural	2 months (from date of staff report)
2.	Development of guidelines for proper use of material introduced <i>in camera</i> at hearings and whether it should be included in discipline committee/Convocation reports	This issue arose most recently at a discipline hearing on November 20, 1996 but was previously identified by the Committee in September 1996. The question relates, for example, to personally sensitive material filed at a hearing that is central to a panel's disposition, and how that material should be referred to or reflected in the reasons for decision.	Committee	Procedural	2 months

24th January, 1997

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
3.	<p>Policy discussion on the need to re-evaluate the Rule 20 requirement (Convocation's approval for a lawyer to employ or use the services of disbarred, suspended, etc. members) in the context of:</p> <ul style="list-style-type: none"> • whether Rule 20 should apply to administratively suspended members (as opposed to disciplinary suspensions) • the number of suspensions occurring • how economic/financial pressures are affecting the number of suspensions, and the limited options available to suspended members to find legal employment <p>The question becomes whether the Rule, which may be disadvantageous to a certain status of member, is still necessary as a regulatory measure in the public interest.</p>	<p>The economic issue could be viewed as a sub-issue of 1. in List A above.</p> <p>Rule 20 does not distinguish between those suspended through discipline or those administratively suspended (eg. non-payment of annual fee). The question is whether there should be a difference in the way the Rule is applied</p>	Committee	Policy	2 months

24th January, 1997

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
4.	As a function of its regulatory role, a review of the Law Society's authority to apply for judicial review of itself	This issue was the focus of the Topp/Carey motion made at Convocation earlier this fall, but which was adjourned. The issue essentially relates to the independence of the prosecutorial authority of the Society and the extent, if at all, to which Convocation should be involved in a process where the Society's prosecutor has decided that a decision of the Society (Convocation or Committee) should be judicially reviewed.	Committee	Procedural	2 months
5.	Policy discussion on authorization for disciplinary action for non-reporting of claims to LPIC to the detriment of clients, and failure to comply with LPIC filing requirements	The Rules state the lawyers should report potential claims to their insurer, but there is no mandatory requirement, and thus the issue becomes whether non-reporting should be the subject of discipline.	Working Group	Policy	2 months
6.	Development of a policy on the ethics of a lawyer's sexual relationship with a client	For some time, there has been a need to develop a policy on how the Society should respond when lawyers are intimately involved with their clients, largely from the perspective of objectivity in the pursuit of a matter and how controlling influences which may emanate from such relationships affect the solicitor/client relationship.	Committee	Policy	2 months

24th January, 1997

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
<i>LIST C - LOWEST PRIORITY</i>					
1.	<p>Policy discussion on the need to re-evaluate, apart from the economic circumstance question, the rule requiring lawyers to fulfill financial obligations relating to their practices (Rule 13). Questions include:</p> <ul style="list-style-type: none"> • whether the identity of the creditor should affect how the Society pursues the matter (eg. LPIC deductibles, SearchLaw accounts) • size of obligation • legal aid disbursement/agency accounts paid to but misapplied by a lawyer 	<p>The financial obligation rule has been discussed previously at the policy level. Most recently, the focus has been on whether debts connected to Law Society programs should be pursued as discipline cases.</p>	Committee	Policy	2 months

24th January, 1997

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
2.	<p>As a matter of regulatory policy</p> <ul style="list-style-type: none"> • whether Rule 7 (borrowing from a client) or its Commentary should be revised to provide for situations where the client/lender is a sophisticated party who is in the business of investing or lending money • whether Rule 23 (lawyers in mortgage transactions) as it relates to the prohibition on a lawyer guaranteeing a mortgage for a client should be revised 	<p>There is currently a prohibition on loans from a client to a lawyer outside of the institutional lending scheme, but a recent case before the discipline authorization committee indicates that there may be room to provide for situations as described above without comprising clients' interests. This may be one issue which illustrates how the status of the "sophisticated client" may require recognition generally in the Society's prescriptions for conduct.</p> <p>Rule 23 currently does not distinguish between situations where a lawyer guarantees a mortgage involving a lender/borrower client and where the lawyer personally guarantees his or her obligation for a loan which may be through the lawyer's or the lawyer's spouse's company, for example. The latter situation, it is suggested, should not be subject to the prohibition.</p>	Committee	Policy	2-3 months

	ISSUE	COMMENTARY	PROPOSED ASSIGNMENT	POLICY OR PROCEDURAL	TIME LINE
3.	Development of guidelines and/or principles for: <ul style="list-style-type: none"> • sentencing at discipline hearings • commencement date for suspensions; whether suspensions should take place immediately, and the impact on Convocation and lawyer who may act on the suspension 	The policy of deference to joint submissions contains reference to a "range" of penalties, but no such range formally exists. Because discipline decisions are not necessarily consistent, the question is whether guidelines would of assistance to the profession, counsel and Convocation, or whether, where cases are decided on their own merits, guidelines would not be useful.	Committee	Procedural	2 months
4.	Policy decision on whether staff, as opposed to benchers, can authorize payments from the Compensation Fund	This issue was on the agenda of the November 28, 1996 meeting of the Governance Restructuring Implementation Task Force as part of a transitional proposal but has been deferred pending an opinion from Andrew Brockett on this and other matters. The policy/procedural discussion on this issue must take place in the context of what the relevant legislation and regulations provide.	Committee	Procedural	1 month

A discussion followed.

It was moved by Mr. Aaron, seconded by Ms. Puccini that the work plan go back to Committee for refinement and inclusion of specific real estate issues.

Not Put

It was moved by Ms. Cronk, seconded by Ms. Sealy that the Report be adopted.

Carried

THE REPORT WAS ADOPTED

GOVERNANCE MATTERS

PROFESSIONAL REGULATION COMMITTEE REPORT

Meeting of January 9, 1997

Purpose of Report: Decision-Making

Mr. MacKenzie presented the 2 new forms, being the Private Practitioner Form, and the Public Accountant's Report to Lawyer for Convocation's approval.

Professional Regulation Committee
January 9, 1997

Report to Convocation

Purpose of Report: Decision-Making

Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on January 9, 1997. In attendance were:

 Carole Curtis (Chair)
 Gary Lloyd Gottlieb
 Gavin MacKenzie
 Niels Ortved
 Hope Sealy

 Staff: Georgette Gagnon, J. Scott Kerr, Michael Seto, Jim Varro
 and Jim Yakimovich
2. The Committee considered two substantive matters:
 - The remaining two of the three new forms to replace existing Forms 2 and 3, and the Rule change required to give effect to the new forms
 - Issues lists for development of Committee priorities and a work plan for presentation to Convocation for its priority-setting agenda
3. This report contains:
 - the Committee's proposal to amend Rule 56 of the Rules made pursuant to the *Law Society Act* so that the new forms can be used for the 1996 annual filings
 - the prioritized issues for Convocation's review
 - incidental information on
 - i. the Society's monitoring of the government's initiative to discontinue the current solicitor-client fee assessment process and
 - ii. 1996 discipline authorization statistics prepared by the Complaints Department.

NEW FORMS

A. NATURE AND SCOPE OF THE ISSUE

4. New forms have been designed to replace existing Forms 2 and 3 ¹ for the Society's annual filings.
5. At the November 29, 1996 Convocation, a Rule change was passed to adopt the new Membership Information Form. The remaining two forms, the Private Practitioner Form and the Public Accountant's Report to Lawyer, were subject to further review by the Committee.²
6. The Committee completed its review of staff's additional work on the Forms, and Appendix 1 to this Report includes Explanatory Notes for each of the Private Practitioner Form and the Public Accountant's Report to Lawyer.
7. A Rule change for Convocation's approval on the recommendation of a committee of Convocation, at this stage, is required before use of the remaining two new forms can be implemented.

B. BACKGROUND ³

Reasons for Development of the New Forms

8. A Law Society staff working group was formed to review the process surrounding the forms that members must submit to the Society each year. The purpose was to improve the efficiency of the Society's collection and processing of membership information, and to accommodate the Society's evolution to greater electronic management of information.

¹These forms are prescribed through s. 16 of Regulation 708 and include the certificate of the lawyer respecting his or her practice and the report of the public accountant, both of which are required to be filed annually by members of the Society.

²The Private Practitioner Form was not approved by Convocation on November 29, but was sent back to the Committee for review together with input/commentary from benchers through staff, as directed by Convocation. The Public Accountant's Report to Lawyer was not approved by the Committee at its November 14, 1996 meeting, and staff were asked to prepare supporting/explanatory material for the changes to the annual filing that this form introduces.

³This information was provided to Convocation on November 29, 1996 and is repeated here in relation to the Committee's review and recommendation on the remaining two forms.

9. Currently, six separate forms are required to be filed annually by members. Staff determined that most of the required information could be incorporated and merged into two main documents, and an additional schedule. The new forms were designed to allow the answers to the questions on the forms to be electronically scanned by a machine, thereby improving efficiency in the information-gathering process.
10. The electronic collection of data will allow the compilation of more information and improve access and management of information for the better governance of the profession.
11. In particular, it will:
 - improve the integrity of the Society's database of information
 - facilitate Society-wide access to membership information so as to provide better service
 - enable computer technology to conduct partial annual review of filings and allow staff to focus on the substantive review of exception reports
 - improve monitoring of the Rules of Professional Conduct and the Law Society Regulations through enhanced self-reporting
 - enable compilation of statistical data to address various governance issues as they may arise in the future
 - serve as a stepping stone to electronic filing
 - with further advancements, save administrative (including staffing) costs⁴
12. The new forms were designed to reduce the necessary filings for the second year and subsequent years after they are implemented. The forms will permit the Society to report to its members information it has obtained and which is relatively static, and on which members will need only to confirm the continued accuracy or advise of changes. A larger "package" for the first year, however, is required to compile the base information.
13. Information received from the new forms will also enhance the Society's information-gathering capabilities for a transformation project underway to re-write the membership records database.

C. OPTIONS ANALYSIS

The Requirement for a Committee's Proposal to Convocation

14. The new forms include the certificates and the public accountant's report that are required under section 16 of Regulation 708. The regulation stipulates that the certificates and the report are to be "in the form prescribed by the rules".

⁴While it is anticipated that the new forms will improve the quality and the availability of data to the Society, levels in budgeting for forms and processing will stay at at least current levels. Further advancements such as improved automatic follow up and the introduction of electronic means of filing should reduce administrative costs in future.

15. If the new forms are to be used for the 1996 annual filings, Convocation will have to exercise its legislative function and amend Rule 56 together with the existing forms.
16. Pursuant to Rule 1, amendments to the rules can be accomplished in only two ways:
 - By notice of motion given at the Convocation immediately preceding the Convocation at which the motion to amend the rules is made. (Notice has not been given in this case.)
 - By proposal in the report of a committee, followed by a motion in Convocation to adopt the proposal.⁵
17. Under the rules as currently worded, a committee proposal (effectively a recommendation) is the only way to introduce rule amendments to Convocation if notice of the amendment has not been formally given at the previous Convocation.

The Policy Governance Perspective

18. Similar to the issues surrounding search warrants, the staff implementation of the regulatory prescription requiring forms for the annual filings is a "means" function.
19. As discussed above, however, the new forms require a "recommendation" of a committee of Convocation to Convocation. In such situations, the "ends/means" distinction in defining policy and its implementation cannot be strictly applied. The Policy Governance Model itself may have to be modified in situations where Convocation is exercising its delegated legislative function (to make regulations and rules) under the *Law Society Act*.⁶

Commentary

20. The Committee approved adoption of the two remaining new forms identified above.
21. Certain minor grammatical refinements have been made to the forms since the Committee's review on January 9. The Committee also requested that staff clarify the relations described in the Private Practitioner Form, question 6(ii) on page 2, to distinguish between the lawyer's spouse and other relationships by marriage.

⁵Please refer to Appendix 2 to this Report for the provisions of Paragraph 27 of subsection 62(1) of the *Law Society Act*, Section 16 of Regulation 708, Rule 1 and part of Rule 56 (subrules 56(1) to 56(5)).

⁶Rule 1 (which prescribes the amending procedure) is currently under review to determine if an amending process more compatible with the new governance structure can be devised.

22. Accordingly, re-printed forms including the above changes will be available for Convocation on January 24.

Update on the Membership Information Form

23. Since Convocation on November 29, 1996, staff were able to assemble and mail the french version of the Membership Information Form. The completed forms received to date from lawyers indicate:
- 100% accuracy in completion of the Form
 - positive commentary on the Form and the ease of completing it
 - for the most part, lawyers are *not* completing the optional question on ethnicity, etc. that was added at the November 29 Convocation⁷
 - the question on pro bono hours is completed, providing the anticipated statistic in that respect.
24. Overall, staff report a positive and meaningful response to the new Form.

The Committee's Proposal

25. The Committee therefore proposes that the two remaining forms, the Fiscal 1996 Private Practitioner Form and the Public Accountant's Report to Lawyer, be adopted.
26. The Committee suggests that the form of the motion for Convocation be as follows:

MOVED, pursuant to the authority granted by paragraph 27 of subsection 62(1) of the *Law Society Act*:

1. That Rule 56 be amended by adding the following subrules:
 - (2.1) The certificate required to be filed with the Society by a member who meets the requirements of clause (c) of subsection 16(3) of the said Regulation 708 shall be included in the Private Practitioner Form which is appended to these rules.
 - (2.2) The certificate required to be filed with the Society by a member under subsection 16(2) of the said Regulation 708 shall be included in the Private Practitioner Form which is appended to these rules.
2. That subrule 56(3) be revoked and replaced by the following:
 - 56(3) The report of a public accountant that is required to be filed with the Society by a member under subsection 16(2) of the said Regulation 708 shall be the Public Accountant's Report to Lawyer which is appended to these rules.

⁷It is possible that the lawyers who have filed to date did not fit into the groups described in the question.

3. That the following forms (as attached to the Secretary's copy of this motion) be prescribed, subject to the change identified in paragraph 4 below:
 - ♦ Fiscal 1996 Private Practitioner Form.
 - ♦ Public Accountant's Report to Lawyer.
4. That the year specified in the title of the Private Practitioner Form be altered from year to year so as to identify the year in question.

Options and Alternatives for Decision by Convocation

27. Convocation must decide:

- *Whether to approve the two new forms, being the Private Practitioner Form, and the Public Accountant's Report to Lawyer, on the recommendation of the Committee*
- *Whether the language in the above motion reflects the required amendments to Rule 56*

COMMITTEE ISSUES PRIORITY LISTS

28. To assist Convocation in setting priorities for its work, the Committee, in formulating its work plan, assessed its priorities based on identified issues.
29. Lists of the Committee's prioritized issues, with explanatory commentary, have been developed. These issues were identified previously by the Committee or referred to the Committee through Convocation, benchers or staff. The lists are designated A, B and C, with A being the highest priority.
30. The Committee identified how the policy issues should be developed for Convocation's consideration, either through the Committee, a task force or working group. A designation of the issue as policy or procedural, to further clarify the scope of the issue, was also added.
31. The Committee recognized that the lists do not encompass all the issues that the Committee will review and that what is presented are the "known" issues. New matters will continue to arise, especially, it is anticipated, those with a regulatory component.
32. The lists, which will appear under separate cover with the other Committee's issues, are provided to assist Convocation in its priority-setting agenda as it directs work through the Committee.

INCIDENTAL INFORMATION FOR CONVOCATION

A. SOLICITOR-CLIENT FEE ASSESSMENTS

33. The Committee continues to monitor the government's initiative to discontinue the current fee assessment process. The Attorney-General recently confirmed his agenda in this respect, and through his representative on the fee assessment project, wishes to continue to consult with various organizations, including the Law Society, on how a new system might be structured.
34. The Law Society, together with these other groups, in reviewing how the consultations could be most efficiently and productively pursued. To that end, the co-chair of the CBAO's special committee on assessment of costs is communicating with the Treasurer and the Advocate's Society.

B. 1996 DISCIPLINE AUTHORIZATION STATISTICS

35. Statistics for the 1996 calendar year (with comparative figures for other years) have been prepared by the Complaints Department and provide information on the results of the review of matters referred to the Chair and Vice-chairs of the Discipline Committee for disciplinary action or other disposition.
36. The statistics show
 - the number of discipline complaints authorized
 - the number of Invitations to Attend and Letters of Advice authorized
 - the most common complaints authorized, and
 - the number of lawyers against whom complaints have been authorized.

24th January, 1997

APPENDIX 1

EXPLANATORY INFORMATION ON THE NEW FORMS

LAW SOCIETY OF UPPER CANADA - FORMS PROJECT
Private Practitioner Form - Explanatory Notes

Question	Objectives of Question (* denotes Annual Objectives, ⇨ denotes Long Term Objectives/Continuing Needs)	Origin/Background
Q.1 - Handling client funds/valuables	<ul style="list-style-type: none"> determines whether member is handling client property and thus whether (s)he should be maintaining trust records as required by Regulation 708 	- Per existing Form 2 - questions 1, 3, 4 and 5
Q.2 - Mixed Trust Accounts	<ul style="list-style-type: none"> determines whether member operates a mixed trust account ⇨ provides basis for collection of information so as to facilitate the dispensing with Form 1 required by the Law Foundation 	- Per existing Form 2 - question 6(a)
Q.3 - Law Firm Mixed Trust Accounts	<ul style="list-style-type: none"> determines whether member has access to client funds through the firm's mixed trust account(s) 	- Per existing Form 2 - question 6(a)
Q.4 - Separate client trust accounts	<ul style="list-style-type: none"> determines whether member has access to separate trust accounts for clients opened in the name of the firm 	- Per existing Form 2 - question 6(b)
Q.5 - Separate client trust accounts	<ul style="list-style-type: none"> determines whether member has access to separate trust accounts for clients opened in his/her name 	- Per existing Form 2 - question 6(b)
Q.6 - Estate Accounts	<ul style="list-style-type: none"> determines whether member has access to client property as sole estate trustee, with emphasis on estates relating to former clients who were unrelated to the member; the existing question asks for information relating to any estate bank accounts which the member has signing authority. ⇨ provides information relating to client estates in which claims to the Compensation Fund may arise in the future and allows for Society follow up to reduce claims and complaints related to solicitors acting as sole estate trustee. ⇨ provides basis to determine whether reasonable accounting practices are in place for estate monies that are not recorded as part of the firm's trust accounting records. 	- Refines current Form 2 question 6(c)





Question	Objectives of Question (* denotes Annual Objectives, ⇨ denotes Long Term Objectives/Continuing Needs)	Origin/Background
Q.7 - Powers of Attorneys	<ul style="list-style-type: none"> • determines whether member has sole access to client property and focuses on the actual exercise of authority under a power of attorney; the existing question asks for information relating to client bank accounts over which the member has sole signing authority which caused confusion in relation to Powers of Attorney prepared for future use. ⇨ provides information relating to client property in which claims to the Compensation Fund may arise in the future and allows for Society follow up to reduce claims and complaints related to solicitors exercising access to client property through a power of attorney ⇨ provides basis to determine whether reasonable accounting practices are in place for client monies accessible by the member solely and not recorded as part of the firm's trust accounting records. 	- refines Form 2 question 6(d)
Q.8 - Borrowing from clients	<ul style="list-style-type: none"> • information relating to potential breaches of Rule 7 of the Rules of Professional Conduct. 	-Per existing Form question 7
Q.9 - Personal Guarantees	<ul style="list-style-type: none"> • information relating to potential breaches of Rule 23(6) of the Rules of Professional Conduct 	- Per existing Form 2 question 10(c)
Q.10 - Loans from Clients	<ul style="list-style-type: none"> • information relating to compliance with Rule 5 of the Rules of Professional Conduct. • source of complaints where member attempts to enforce security against a client following default • in the course of audits conducted, the Society frequently finds instances where Rule 5 has been overlooked. This question is intended to draw the membership's attention to this potential problem with the beneficial effect of improving membership understanding of the relevant consideration and issues. 	- NEW
Q.11 - Mortgages held in trust	<ul style="list-style-type: none"> • information measuring compliance with section 15.1 of Regulation 708 relating to required records if the member holds mortgages in trust. • definitions of "related person" and "corporation" have been refined to provide better clarity and to focus the inquiry to higher risk instances. 	- Per existing Form 2 question 8

Question	Objectives of Question (* denotes Annual Objectives, † denotes Long Term Objectives/Continuing Needs)	Origin/Background
Q.12 - Mortgage administration	<ul style="list-style-type: none"> information relating to member's administration of mortgages on behalf of clients to confirm that the member is properly recording all receipts and disbursements. definitions of "related person" and "corporation" have been refined to provide better clarity and to focus the inquiry to higher risk instances. 	- Per existing Form 2 question 9
Q.13 - Forms 4 and 5	<ul style="list-style-type: none"> determines whether member needs to have an accountant perform a random review of files in which forms 4 and 5 are required with attendant clarification of the availability and applicability of the form 4 schedule A 	- Per existing Form 2 question 11
Q.14 & 15 - Mortgage lending activities	<ul style="list-style-type: none"> determines whether the member has acted for a non-institutional lenders in mortgage transactions during the reporting period 	- Per existing Form 2 questions 11, 12 and 13
Q.16 - Joint ventures with clients	<ul style="list-style-type: none"> identifies those members who have engaged in joint ventures with clients and if so, whether there has been compliance with Rules 5, 7 and 23(6) of the Rules of Professional Conduct. 	- Per existing Form 2 - question 10
Lawyer's Checklist	<ul style="list-style-type: none"> provided purely as a service to the members to assist in coordinating enclosures to the filing so as to reduce the amount of follow up correspondence and inconvenience to the membership with respect to missing enclosures 	- NEW
Breakdown of member's relationship to the practice	<ul style="list-style-type: none"> member's relationship to the practice has been elaborated with the intention of reducing the amount of redundant filing required of the membership. Currently, all partners of firms must file copies of an accountant's report which is often nothing more than photocopies of the same report but signed by the filing member. The new proposed regime will dispense with the filing of repetitive copies of accountants' reports by partners of the same firm. 	- NEW

January 3, 1997

LAW SOCIETY OF UPPER CANADA - FORMS PROJECT
Public Accountant's Report to Lawyer - Explanatory Notes

Question	Objectives of Question (* denotes Objectives, A denotes accountant's review process if a new question)	Origin/Background
Q.1(a) and (b) Trust Accounts	<ul style="list-style-type: none"> determines whether the member operated trust accounts (mixed and/or separate client accounts). New to this question is the request for the grand total of accounts and that a void cheque, photocopy of void cheque, copy of passbook or typed list of accounts be filed. This is intended to compile base information so that in subsequent years, the Society will report to members accounts on file and will seek confirmations of continued accuracy or changes. will also serve to meet reporting requirements of the Society to the Law Foundation so as to prompt the discontinuance of Form 1 (Report to Law Foundation). 	Per existing Form 2 - Q.6 and Form 3 - Q.3(a) and (b)
Q.1(c) to (l) and 2 Books and Records	<ul style="list-style-type: none"> confirms the existence of books and records as required by section 15 of Regulation 708. 	Per existing Form 3 - Q.3 and 4
Q.3(a) Physical Overdrafts	<ul style="list-style-type: none"> finds and reports instances of trust bank account overdrafts so that the Society may take appropriate measures where such trust shortages are reported and not remedied in a satisfactory manner. 	Per existing - Form 2 - Q.5(iii)
Q.3(b) Confirmation of Reconciliations	<ul style="list-style-type: none"> reports instances where the monthly trust reconciliations did not balance so that the Society may take appropriate measures if such trust reconciliations were not remedied in a satisfactory manner. 	Per existing - Form 2 - Q.5(i)
Q.3(c) Overdrawn Client Balances	<ul style="list-style-type: none"> reports instances where individual client trust accounts are overdrawn in violation of subsection 14(8) of Regulation 708. reporting requirement is relaxed by increasing the threshold amount of the recorded client ledger trust shortage to \$50.00 before a reporting is required or where shortages of more than \$10.00 were not corrected within two months of the account reflecting an overdraft position. 	Per existing - Form 2 - Q.5(ii)

Question	Objectives of Question (* denotes Objectives,  denotes accountant's review process if a new question)	Origin/Background
Q.3(d) Dormant Trust Balances	<ul style="list-style-type: none"> identifies those clients whose trust fund balances have remained unchanged for the year promotes return of trust funds to clients allows for administrative follow up in regard to Convocation's initiative in the fall of 1996 to become the repository of dormant client trust money, either through the Society or the Law Foundation  accountant need only compare the client trust listings for the first and the last month of the fiscal year. Where the dollar amount pertaining to any client has not changed, the accountant is to denote the amount as "dormant" on the copy of the trust listing which is provided to the Society. The total dollar amount of money denoted as dormant is to be reported on the form. 	NEW
Q.3(e) Delayed Deposits	<ul style="list-style-type: none"> identifies those instances where the member fails to make the month end trust deposits on a timely basis. Although a delayed deposit may not lead to a shortage in the trust bank account, the delay may result in a misapplication of trust money to the benefit of the client whose trust deposit was delayed.  requires a quick review of the monthly trust reconciliations and bank statements (note that confirmations of reconciliations are to be conducted pursuant to question 3(b) in any event) for late deposits as at month end and date of actual deposit. 	NEW
Q.4(a) General Account Credit Balances	<ul style="list-style-type: none"> identifies those instances where, at the year end, the member continues to hold client money, received in excess of amounts billed to the client, in the non trust (general) accounting records of the law firm.  At each month end and at the year end, most law firms prepare an accounts receivable listing for collection management purposes, reporting to the bank, and for financial statement purposes. The accountant is usually given a copy of, at least, the year end listing, or can readily request a copy. A quick review of the year end accounts receivable listing will determine whether or not credit balances exist. Where such is the case, the name can be readily checked against the client records. Where that is the case, corrective action should be taken by transferring the money to the trust account. 	NEW

Question	Objectives of Question (* denotes Objectives, / denotes accountant's review process if a new question)	Origin/Background
Q.4(b) Client Trust Accounts in the Name of Members or "Miscellaneous"	<ul style="list-style-type: none"> identifies those instances where the member retains earned fees or keeps personal money in the trust account, contrary to subsections 14(6) and (7) of Regulation 708. / In a computerized records environment, a field search will readily identify those accounts. In a hand posted system, the accountant need only quickly scan the identification area of the active trust ledger cards to find these accounts. 	NEW
Q.5 Estates/Powers of Attorney	<ul style="list-style-type: none"> refined and specifically designed to identify instances where the member has sole authority, as estate trustee, or has exercised sole authority pursuant to a Power of Attorney over money belonging to a (former) client who is unrelated to the member, yet does not maintain any accounting records in regard to those monies. ensures that basic accounting records are put in place. / All that is required is verification of the existence of records being maintained; there is no expectation or requirement that the accountant verify the accuracy or completeness of the records. Additionally, the accountant merely needs to review the monthly reconciliations to see if such accounts were part of the monthly comparisons. If the firm reconciles these estate/power of attorney records, this adds a degree of assurance that dealings with client funds are properly recorded. 	Per existing - Form 2 - Q.6 - NEW review proces for accountant
Q.6 Post Period Review	<ul style="list-style-type: none"> designed to address the numerous situations Audit staff find each year where members bring the trust accounting records up to date only at year end; for the balance of the year, up to date trust records are not maintained. / Procedure is to be completed only if the accountant's examination of the member's records is conducted more that 4 months after the fiscal year end. In order to complete a trust reconciliation, trust records must be up to date. This question requires that the accountant merely confirm that the "latest" required trust reconciliation has been completed in the period subsequent to the fiscal year ended (the accountant is not required to confirm the accuracy of completeness of the reconciliation; just that it has been done). This step is minor in nature, but an important indicator in regard to on-going compliance measurement regarding client trust accounting; keeping in mind that if a negative response is reported, the member's records would be three months in arrears. 	NEW

Question	Objectives of Question (* denotes Objectives, / denotes accountant's review process if a new question)	Origin/Background
Q.7-9 Mortgages Held in Trust	<ul style="list-style-type: none"> confirms that ledgers and records required by section 15.1 of Regulation 708 are in existence. confirms the reconciliation of total principal balances of mortgages held in trust with total of all principal balances held for investors as required by clause 15.1(2)(c) of Regulation 708. 	Per existing - Form 3 Schedule A - Q.8-11 inclusive
Q.10 Forms 4 and 5	<ul style="list-style-type: none"> confirms and verifies on a random sampling basis, the completion of forms 4 and 5 as required by section 15.2 of Regulation 708. 	Per existing - Form 3 Schedule A - Q.12
Accountant's Checklist	<ul style="list-style-type: none"> provided as a service to the accountants to assist in coordinating enclosures and schedules to the report so as to reduce the amount of follow up correspondence and inconvenience to the membership and their accountants with respect to missing enclosures or schedules. 	NEW
Law Firm Accounting System	<ul style="list-style-type: none"> will provide the Society with information as to accounting software packages used by the profession. may also assist Law Society Staff (Auditors/Examiners/Professional Standards) in preparing for attendances at member's offices by being aware of the system that the member is using to maintain books and records. It is proposed that this information will be reported to the member in subsequent years for confirmation of continued accuracy or particulars of changes. 	NEW

January 6, 1997

APPENDIX 2

EXTRACTS FROM THE LAW SOCIETY ACT, REGULATIONS AND RULES

EXTRACTS FROM THE LAW SOCIETY ACT

RULES

62.—(1) Subject to section 63, Convocation may make rules relating to the affairs of the Society and, without limiting the generality of the foregoing,

....

27. prescribing forms and providing for their use, except the form of summons referred to in subsection 33 (10).

EXTRACTS FROM REGULATION 708
(UNDERLINING ADDED)

16.—(1) Every member who engages in the private practice of law in Ontario shall inform the Secretary in writing of the termination date of his or her fiscal year, and shall file with the Secretary written notice of any change in the fiscal year within one month after the change is made.

(2) Every member who engages in the private practice of law in Ontario shall file with the Society within six months from the termination of his or her fiscal year a certificate in the form prescribed by the rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the rules in respect of each practice with which he or she was associated since his or her last filing.

(2.1) For the purpose of completing the report required under subsection (2), the public accountant,

- (a) shall have full access, without restriction, to the files maintained by the member under section 15.2;
 - (b) shall be entitled to confirm independently the particulars of any transaction in the files; and
 - (c) shall protect any privilege attaching to the documents in the files.
- (3) Subsections (1) and (2) do not apply to a member,
- (a) who has not engaged in the private practice of law in Ontario since last filing under this section;
 - (b) who has practised exclusively as an employee of a government agency, corporation or other non-member of the Society since last filing under this section; or
 - (c) who has practised exclusively as an employee of a sole practitioner or of a firm and who has not practised on his or her own account apart from such employment since last filing under this section,

if the member files with the Society on or before the 30th day of November in each year a certificate to that effect in the form prescribed by the rules.

EXTRACTS FROM THE RULES

PROCEDURES AS TO RULES

1. (1) Where it is proposed to make, amend or revoke any rule and the proposal is not made in the report of any committee which has been adopted by Convocation, the proposal shall not be acted upon unless notice of motion to that effect was given at the Convocation immediately preceding the Convocation at which the motion is made.

(2) Where in the report of a committee it is proposed that a rule be made, amended or revoked, no notice of motion to that effect need be given, but a motion specifying the proposal may be made immediately after the adoption by Convocation of that part of the committee's report.

....

FORMS

56. (1) The notice of intention to apply for permission to resign referred to in subsection 12(2) of Regulation 708 of the Revised Regulations of Ontario, 1990, shall be in Form 1.

(2) The certificate required to be filed with the Society by a member under subsection 16(2) of the said Regulation 708 shall be in Form 2.

(3) The report of a public accountant that is required to be filed with the Society by a member under subsection 16(2) of the said Regulation 708 shall be in Form 3.

(4) The investment authority required to be maintained by a member under paragraph 15.2(1)(a) of the said Regulation 708 shall be in Form 4.

(5) The report on investment required to be maintained by a member under paragraph 15.2(1)(b) of the said Regulation 708 shall be in Form 5.

....

APPENDIX 3

1996 DISCIPLINE AUTHORIZATION STATISTICS

(See pages 22 - 23)

.....

It was moved by Mr. MacKenzie, seconded by Ms. Sealy that the forms be adopted and that the language of the motion set out in the Report reflecting the required amendments to Rule 56 be adopted.

Carried

THE REPORT WAS ADOPTED

INFORMATION ITEMS

ADMISSIONS AND EQUITY COMMITTEE REPORT

Meeting of January 9, 1997

Purpose of Report: Information

Admissions and Equity Committee
January 9, 1997

Report to Convocation

Purpose of Report: Information

Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions & Equity Committee ("the Committee") met on January 9, 1997. Committee members in attendance were Philip Epstein (Chair), Nancy Backhouse (Vice-Chair), Nora Angeles, Denise Bellamy (morning), Tom Carey (afternoon), Marshall Crowe, Allan Lawrence, Frank Marrocco, and Harriet Sachs. Staff in attendance were Alan Treleaven, Meg Angevine, and Sophia Sperdakos.
2. The Committee is reporting on the following matters:
 - approval of articling principals;
 - approval of Co-op program for Queen's University Law School;
 - its discussion on the policy concerning appeals from decisions of the Director of the Bar Admission Course;
 - a request by a member of another provincial bar to work in Ontario on a temporary basis without being called to the bar; and

- the Admissions and Equity Committee's priorities list and work plan, for Convocation's consideration. This list contains the outcome of the Committee's policy discussions at the meeting.
3. This report contains:
- a) information on the Committee's
 - process for the approval of articling principals;
 - approval of the Queen's Co-op program;
 - discussion concerning the request by a member of another provincial bar; and
 - discussion concerning appeals.
 - b) background on the Committee's priorities list and work plan.

APPLICATIONS FOR APPROVAL AS ARTICLING PRINCIPALS

4. The former Articling Sub-committee, a permanent sub-committee of the Legal Education Committee, was authorized to determine whether a member may serve as an articling principal. In making its decisions it considered the recommendations of the Articling Director. The Legal Education Committee was replaced by the Admissions and Equity Committee. Rule 35(2) made under s. 62(1) of the *Law Society Act*, provides that the Admissions and Equity Committee ("the Committee") performs the functions of the former Legal Education Committee. In the absence of an Articling Subcommittee, the Committee is authorized to determine applications for articling principals.
5. On January 9 the Committee dealt with 5 applications.

QUEEN'S LAW SCHOOL PROPOSAL FOR COORDINATED LLB-M.PL. CO-OPERATIVE PROGRAM

6. Dean Donald Carter of Queen's University Faculty of Law requested approval of a new co-operative program to be jointly offered by the Queen's Faculty of Law and the Queen's School of Urban and Regional Planning. The Committee noted that the former Legal Education Committee approved a similar co-operative legal education proposal from Queen's University in September of 1996. The approval was for a joint LL.B.-Master of Industrial Relations degree.
7. The five year program for which approval was sought includes 12 months of co-operative placement with approved practising lawyers. The 12 month employment placement would be divided into 4 months at the end of the third year of academic study and 8 months at the end of the fourth year of academic study. Following completion of the second co-operative placement term, students would return for a final academic term of approximately four months in length. Graduates would receive both the LL.B. and Master of Planning degrees at the conclusion of the program.
8. The proposal contemplates that graduates would satisfy the articling requirement by the 12 months of co-operative placement, and be permitted to satisfy the remaining Bar Admission Course requirements by completing Phases One and Three of the Bar Admission Course consecutively following their university graduation. Students would therefore be eligible for Call to the Bar one year later than students in the regular LL.B. program.

9. The academic content of the Queen's program does not require Law Society approval, as it falls within the current terms of approval of the Queen's LL.B. Satisfying the articling requirement through the 12 months in co-operative placement does, however, require approval, because it is an exception to the policy that students not receive articling credit for time in a law firm prior to completing law school. The approval of the first co-operative program proposal in September of 1996 was also an exception to the policy that students not receive credit toward the articling requirement for time spent working in a law firm prior to completing law school.
10. Convocation is not required to determine the request since jurisdiction to approve the co-operative program proposal is vested in the Admissions and Equity Committee (having assumed the functions of the former Legal Education Committee) by subsection 23(6) of Regulation 708, which provides that:

Where a student-at-law has graduated from an approved law course that was conducted under a co-operative education system, the Legal Education Committee may modify a period of time mentioned in a clause of subsection (5) in consideration of particular experience or education in the co-operative system that is equivalent to the requirement or part of the requirement of that clause.
11. Subsection 5 sets out the components of the Bar Admission Course, which consists of a one month teaching term before articles, 12 months of articles of clerkship, and a three month teaching term following articles.
12. The Committee considered the material in support of the request and the recommendation of the Executive Director of Education in favour of the request and approved the request.
13. The Committee also discussed the larger policy issue of alternatives to traditional articling requirements when it considered its list of issues for the consideration of the Committee over the coming months. It considers this an issue for further study.

APPEALS FROM DECISIONS OF THE DIRECTOR OF THE BAR ADMISSION COURSE

14. In the course of the administration of the Bar Admission Course the Director/Registrar are called upon to make certain decisions related to a variety of issues, most importantly examinations. In some previous years students had the opportunity to appeal certain decisions to the former Legal Education Committee.
15. In establishing policy the Legal Education Committee began to reduce the occasions when it would consider appeals, in order to minimize its involvement in individual student matters. In the 1996 Course students were not entitled to appeal decisions to the Admissions and Equity Committee.

16. In 1996 students were provided with a guide to examinations and were made aware of a number of rules that were to be followed in the administration of examinations in 1996. These included a requirement that examination question papers not be removed from the examination site and that students cease writing as soon as notified to do so. In instances where these rules were not followed students failed the examination and were eligible to write supplemental examinations.
17. The Director enforced the rules uniformly and did not differentiate among students based on the individual reasons for which students failed to follow the rules. The rationale for this approach was that it was essential to establish early on the seriousness of the rules, which were created so that the integrity and effectiveness of the examination process could be enhanced.
18. The Committee considered whether it would be appropriate to re-institute the possibility of appeals from decisions of the administrators of the program. The Committee determined that the administration had assessed the situation and exercised its discretion to enforce the rules, uniformly. The Committee was of the view that a revision of the policy relating to appeals is not warranted.

REQUEST FROM MEMBER OF ANOTHER PROVINCIAL BAR (INTER-PROVINCIAL MOBILITY)

19. The Committee discussed the issue raised by a member of another provincial bar, whose law firm has recently opened offices in Toronto. The member wishes to spend six months working in the Toronto office, and thereafter to return to the Toronto office occasionally as his advice is needed. While in Toronto he would continue to serve existing clients and develop future clients in his home province and in Ontario. He proposes to advise clients based in Ontario, his home province, and elsewhere on matters involving federal tax laws and the tax laws of his province. He indicates he will not be advising on matters of Ontario law.
20. The lawyer is not a member of the Law Society of Upper Canada and does not wish to become one. He has requested the Law Society's response on whether it has any objection to his working in the Toronto office without being a member of the Law Society of Upper Canada.
21. The Committee is of the view that there is no jurisdiction in the *Law Society Act* to grant the request. The Committee stated that Convocation has already spoken to the issue by approving amendments to s. 50 of the current statute, which if passed would give it authority it does not currently have to consider such requests. As such it is a staff responsibility to advise the lawyer that the request may not be granted.
22. The Committee discussed the larger policy issue of inter-provincial mobility in its list of priority issues for consideration.

COMMITTEE ISSUES PRIORITY LISTS

23. To assist Convocation in setting its priorities for policy development, the Committee considered a list of policy issues it has identified as coming within its mandate.

24. The issues identified consist of matters outstanding from the mandate of the former Legal Education Committee as well as newly identified issues. The issues are:
- *Entrance Requirements to the Ontario Bar*
 - *The Report on the Accreditation of Foreign Trained and Quebec Trained lawyers*
 - *The French Language Component of the Bar Admission Course*
 - *Equity and Access Issues and the Transitions Report*
 - *Inter-Provincial Mobility of Lawyers and Law Firms*
25. For each issue the Committee has developed a description for Convocation of the nature of the issue, a proposal for the manner in which the work should be allocated (eg. Task Force, working group, Committee) and a projected time line for bringing the matter forward for Convocations' consideration. Taken together the list provides a proposed work plan for the Committee, with priorities assessed for each issue.
26. The list is not intended to be exhaustive. New issues will continue to arise. The Committee's identified issues will appear under separate cover.
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PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Meeting of January 9, 1997

Purpose of Report: Information

Professional Development and Competence Committee
January 9, 1997

Report to Convocation

Nature of Report: Information

Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Professional Development and Competence Committee ("the Committee") met on January 9, 1997. In attendance were Derry Millar (Chair), Larry Banack (Vice Chair), Eleanore Cronk (Vice Chair), Michael Adams, Ronald Cass, Kim Carpenter-Gunn, Mary Eberts, Susan Elliott, Donald Lamont, Helene Puccini and Heather Ross, with staff members Wayne Mowat, Janine Miller, Paul Truster and Susan Binnie.

1. The Committee is reporting on four matters.
 - The Committee's approach to a review of current issues concerning County and District Law Libraries
 - The Committee's response to two reports on systems of civil justice
 - A proposal for responding to Convocation's debate on the Law Society report *Post-Call Learning for Lawyers*
 - Policy issues for future consideration by the Committee
2. This report contains:
 - information on the Committee's conclusions concerning working groups to consider funding and technology issues relating to County and District Law Libraries;
 - information on the Committee's plan for consideration of two major reports relating to systems of civil justice and their implications for the Law Society, namely, the Canadian Bar Association's *Systems of Civil Justice Task Force Report*, and the Ontario Civil Justice Review.
 - information on the Committee's establishment of a working group to review the impact of Convocation's decision on issues relating to post-call education (expected on January 24, 1997).
3. A list of policy issues for future consideration by the Committee was reviewed on January 9 and each issue was identified by priority and by time required. The revised list of Committee issues has been prepared for consideration and review by Convocation and is included under separate cover. The list includes the following issues:
 - a) high priority:
 - issues relating to professional competence;
 - review of reports on civil justice and their implications for the Law Society;
 - funding and technology issues relating to County and District Law Libraries;
 - the issues underlying the Eberts-Ross motion;
 - issues relating to lawyers and post-call learning arising out of the MCLE debate.
 - b) medium priority:
 - review of Specialist Certification program.
4. The Committee heard an information report from the Director of Information Services on recent operational changes to Law Society information services, including the AS/400 system and PC services. In relation to plans for 1997, the major transition projects include replacement of the membership/records database, a common database for the Audit, Complaints and Discipline departments, and a "one-stop call centre" for Law Society callers.

COUNTY AND DISTRICT LAW LIBRARIES

- 5 At a full day discussion of issues relating to County and District Law Libraries ("County Libraries") on November 14, 1996, the Committee reviewed several urgent issues relating to funding of County Libraries and to improved technology for County Libraries and agreed to pass these issues to a working group of the Committee.
6. On January 9, two working groups were established:
 - a group to review funding issues, to consist of at least two benchers;
 - a second working group to review technological and other issues, to include representatives of the County and District Law Association Presidents, the County of York Law Association, and Law Society staff, with bencher membership to overlap with the funding working group.
7. Three principal funding issues were proposed for review:
 - (a) What would be an acceptable distribution formula for County and District Law Library funding?¹
 - (b) Whether part of the annual funding distributed by the Law Society can be retained for technological and other purposes?
 - (c) Whether the County and District Law Libraries should be funded in the future from a single member levy collected as part of the Law Society's member fees?²
8. The second working group, on technology, was formed to look into the future development of County Libraries given the impact of current technological change. The mandate for this working group was to extend beyond technological issues to other aspects of future library needs.
9. In light of recent government reductions in the space allocated to some libraries and the loss of library space in two instances (due to the closing of Court houses), the issue of requirements for adequate library space for County Libraries and the government's treatment of County Libraries more generally was included in the mandate of the technology working group.

CANADIAN BAR ASSOCIATION REPORT ON SYSTEMS OF CIVIL JUSTICE

10. Eleanore Cronk, Chair of the Canadian Bar Association's Task Force on Systems of Civil Justice, reviewed the purpose of the Task Force and the findings in its Report (August, 1996). While emphasising the national focus of the Report, Ms. Cronk identified particular recommendations which have potential relevance for the Law Society. These relate to alternative dispute resolution, legal education, client rights and responsibilities, lawyers' office practices, and professional competence.

¹ If a new distribution formula is to be adopted for the financial year 1998, options developed by this working group should be presented to Convocation by September, 1997.

² This approach was recommended in the Topp Report (the Report of the County Library Review Subcommittee to the Libraries and Reporting Committee) adopted by Convocation in April, 1995.

24th January, 1997

11. Ms. Cronk also referred to the proposals in the Report of the Ontario *Civil Justice Review*, chaired by Mr. Justice Robert Blair,³ and suggested that the recommendations of the Task Force should be reviewed together with those of the Ontario *Civil Justice Review*.
12. As the Canadian Bar Association will consider the report on *Systems of Civil Justice* at its mid-winter meeting in February, 1997, Committee members concurred on the urgency of establishing a small working group to review the recommendations from both reports and report back to Committee in March, 1997. The working group is asked to suggest an approach to a review of the major issues from both reports for the Law Society as a regulatory body.

THE LAW SOCIETY'S REPORT ON POST-CALL LEARNING FOR LAWYERS

13. On January 24, Convocation will debate the Report and Recommendations of the Mandatory Continuing Legal Education Subcommittee, *Post-Call Learning for Lawyers*. The Committee established a working group to evaluate the implications of the decisions concerning post-call legal education made at Convocation and to report to the Committee on February 13, 1997. The working group consists of Larry Banack, Kim Carpenter-Gunn, Michael Adams, with Paul Truster as staff person.

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Legal Aid Financial Statements, Monitor's Report and Budget

The Legal Aid Financial Statements were distributed to Convocation.

(See Legal Aid Financial Statements in Convocation file)

³ Supplemental and Final Report published November, 1996

24th January, 1997

REASONS OF CONVOCAATION re: Alexandre Brooks

Reasons in the Alexandre Brooks discipline matter were filed by the Secretary.

D44/95

THE LAW SOCIETY OF UPPER CANADA

In the matter of)	
The Law Society Act)	
and in the matter of)	<u>Neil Perrier</u>
)	for the Society
)	
Alexandre Brooks)	<u>Brian Greenspan</u>
)	for the Solicitor
of the City of Burlington)	
)	
a Barrister and Solicitor)	Heard: October 24, 1996

REASONS OF CONVOCAATION

I BACKGROUND

1. On April 13, 1995, complaint D44/95 was issued against Alexandre Brooks alleging that he was guilty of professional misconduct.

2. The complaint was heard before a Discipline Committee (the "Committee") on May 14, 1996. The recommendation of the Committee came before a Special Convocation on October 24, 1996. At that Convocation the finding of the Committee as to professional misconduct was adopted. The recommendation as to penalty was not.

II FACTS GIVING RISE TO THE COMPLAINT

3. The complaint was brought by Ms. Jenny Arrenegado (the "Complaint"). The Complainant was the former spouse of Mr. Alexander Karpuchin. In February of 1983 Mr. Karpuchin entered into a lease to own agreement with respect to a property in Etobicoke (the "Etobicoke Property"). The transaction was scheduled to close in December of 1983.

4. In September of 1983, Mr. Karpuchin and the Complainant separated. Negotiations concerning their separation ensued. Mr. Karpuchin fired his first lawyer and retained Mr. Brooks (the "Solicitor") sometime before the closing of the transaction with respect to the Etobicoke Property. At that time the Solicitor had been in practice for six years.

24th January, 1997

5. The Solicitor suggested to Mr. Karpuchin that in order to prevent the Complainant from "in any way, shape or form" trying "to get some interest, or grab some interest in this property" (excerpt from testimony given by the Solicitor in an examination for discovery) Mr. Karpuchin should find somebody that he knew to purchase the property in trust for him. As a result of this suggestion a Deed was prepared and registered by the Solicitor in December of 1983 showing a purchase of the property by Walari and Nina Bill for \$232,000.00. At the same time the Solicitor prepared a Deed wherein the property was sold by Walari and Nina Bill to Mr. Karpuchin for the sum of \$1.00 and "other valuable consideration". This Deed was not registered until April of 1987.

6. On January 24, 1984, Mr. Karpuchin entered into a separation agreement with the Complainant.

7. On May 1, 1987, a Deed was registered showing that Mr. Karpuchin had sold the Etobicoke Property for \$720,000.00.

8. Convocation was advised by counsel for the solicitor that because of the increase in value of the Etobicoke Property the Bills commenced an action asserting their ownership of the Etobicoke Property. The Solicitor was examined for discovery in that action in 1991. During that examination the Solicitor confirmed the fact that the Bills had held the property solely as trustees for Mr. Karpuchin, "that they (the Bills) were there strictly--all the discussions that I had with them were strictly on the basis that they were going to hold this property in trust for Mr. Karpuchin, until the problems between Alexander Karpuchin and Jennie were resolved".

9. In June 1993, the Complainant, some time after she had learned of this arrangement, moved to assert a claim that her separation agreement was invalid because Mr. Karpuchin had hidden an asset from her. The Solicitor was joined as a party. Convocation was advised that the litigation between the Bills and Mr. Karpuchin and the litigation between Mr. Karpuchin and the Complainant has now been settled.

10. The Solicitor admitted before the Committee that his actions in assisting Mr. Karpuchin to hide an asset from the Complainant constituted professional misconduct.

III THE RECOMMENDATION AS TO PENALTY OF THE COMMITTEE

11. The Committee recommended that the Solicitor be reprimanded in Convocation and pay the Law Society costs in the amount of \$500.00.

12. In making this recommendation the Committee emphasized the importance of Rule 1, that of Integrity. They also recognized that the Solicitor's conduct was the kind that tends to bring the profession into disrepute. However, the Committee felt that the Solicitor had been young at the time of the misconduct and that the misconduct had occurred ten years before it came to the attention of the Society. Finally, the Committee was impressed with the fact that were it not for the Solicitor's forthrightness during his examination for discovery in the Bills' action, the misconduct would never have come to light. In this regard the Committee stated that the Solicitor should be commended for his candour and his honesty".

24th January, 1997

IV REASONS AND CONCLUSION OF CONVOCATION

13. In the opinion of Convocation, the Committee committed an error in principle in recommending as a penalty for the Solicitor's misconduct a reprimand in Convocation.

14. Convocation was not impressed with the fact that the misconduct occurred ten years before it was reported to the Society. This merely points to the success of the scheme the Solicitor had devised to assist his client in hiding an asset from his spouse. Nor did Convocation feel that the manner in which the misconduct came to light necessarily said anything about the Solicitor's forthrightness, candour or honesty. The Solicitor explained his scheme in a situation where he was under oath and his former client was going to potentially be deprived of his property because of the scheme the Solicitor had devised. There was no evidence that the Solicitor was in any way motivated by a desire to finally "come clean" and indeed there is no evidence that at the time he admitted to misconduct in 1991, the Solicitor even realized or cared that this conduct constituted professional misconduct.

15. Assisting clients to deceive and mislead the other side in the course of any sort of dispute is unacceptable behaviour. To do so in the context of a family law dispute raises particular concerns. The ordinary citizen is more likely to interact with the legal system in the context of a family law dispute than in practically any other context. He or she is also likely to be highly emotional at the time of that interaction. Solicitors acting for a family law client can play a role in exacerbating what is already an enormously painful experience. When they do so they contribute to a perception on the part of the public that our profession, rather than being part of the solution, is part of the problem.

16. There is almost nothing which can exacerbate family law dispute resolution more than if people engage in the business of hiding their assets. For a solicitor to suggest that a client engage in this behaviour, and then assist the client to devise a scheme to carry it out, fundamentally undermines the ability of our legal system to deliver justice.

17. Such misconduct warrants more than a reprimand in Convocation. For this reason, the Solicitor is suspended for three months, such suspension to commence on October 24, 1996.

DATED: December 11, 1996

Harriet Sachs

ORDERS

The following Orders were filed.

24th January, 1997

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Richard Llewellyn, of
the City of Pembroke, a Barrister and
Solicitor (hereinafter referred to as "the
Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 14th day of March, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Richard Llewellyn be suspended for one month, and indefinitely thereafter until his outstanding filings have been completed, such suspension to commence at the conclusion of any administrative suspension.

DATED this 26th day of September, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David John Parsons, of
the Town of Frankford, 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 July, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th January, 1997

CONVOCATION HEREBY ORDERS that David John Parsons be granted permission to resign his membership in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 26th day of September, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Thomas George Richards, of the City of Owen Sound, 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 9th day of July, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Thomas George Richards be suspended for a period of one month, and indefinitely thereafter until his outstanding filings have been completed, such suspension to commence at the conclusion of any administrative suspension.

DATED this 26th day of September, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th January, 1997

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Richard Michael Hugh Power, 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 5th day of July, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Richard Michael Hugh Power be disbarred as a barrister and that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 26th day of September, 1996

"S. Elliott"

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Jay Duncan Rowatt, of the City of North York, 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 9th of May, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th January, 1997

CONVOCATION HEREBY ORDERS that Jay Duncan Rowatt be granted permission to resign his membership in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 26th day of September, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Larry Spodek, of the City of North York, 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 23rd day of May, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Jerome Cusmariu, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Larry Spodek be suspended for a period of three months commencing November 1, 1996.

DATED this 26th day of September, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th January, 1997

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 26th day of April, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Peter Tensuda be suspended for one month with respect to particular 2(a) of the complaint and four months with respect to particular 2(b), such suspension to run concurrently and to commence at the conclusion of any administrative suspension. Convocation further orders that the Solicitor pay Law Society costs in the amount of \$300 to be paid within six months.

DATED this 26th day of September, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Emily June McAskie, of the City of Burlington, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 29th day of May, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by John Turingia, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th January, 1997

CONVOCATION HEREBY ORDERS that Emily June McAskie be suspended for a period of six months commencing February 22, 1996. Convocation further orders that at the conclusion of the suspension the Solicitor be supervised by a solicitor approved by the Law Society for a further period of six months. Convocation accepts the Undertaking of the Solicitor that she will continue to attend AA as long as is necessary.

DATED this 26th day of September, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Frank Frederick Shunock of the City of Sault St. Marie;

AND IN THE MATTER OF an Application for Readmission to the Law Society of Upper Canada

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Admissions Committee dated the 9th day of September, 1996 in the presence of Counsel for the Society, the Applicant being in attendance and represented by William Trudell, wherein the Application for Readmission was granted and having heard counsel aforesaid;

24th January, 1997

CONVOCATION HEREBY ORDERS that Frank Frederick Shunock be readmitted to membership in the Law Society of Upper Canada, conditional on his completing the educational requirements deemed appropriate by the Society's Director of Education. Convocation further orders that until further decision of a committee of Convocation his practice be supervised by Mr. Michael Ingram and his partners, and that Mr. Ingram be a co-signer of his trust account.

DATED this 26th day of September, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Ritchie James Linton,
of the City of Brampton, 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 11th day of March, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Colm Brannigan, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Ritchie James Linton be suspended for a period of twelve months and pay costs of the Law Society in the amount of \$10,000; \$5,000 to be paid forthwith and \$5,000 to be paid upon resumption of practice. Convocation further orders that upon reinstatement the Solicitor be employed for a period of two years with another solicitor approved by the Law Society.

DATED this 26th day of September, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th January, 1997

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Robert Allan Levine,
of the City of Vaughan, 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 12th day of August, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Robert Allan Levine be reprimanded in Convocation and pay Law Society costs in the amount of \$1,000 with six months to pay.

DATED this 26th day of September, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Peter Edward Heslin,
of the City of Pickering, a Barrister and
Solicitor (hereinafter referred to as "the
Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 26th day of June, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th January, 1997

CONVOCATION HEREBY ORDERS that Peter Edward Heslin be granted permission to resign his membership in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 26th day of September, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Allan Ian Wexler, of
the City of Markham, 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 16th day of July, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Allan Ian Wexler be suspended for a period of two and a half months, effective immediately, and that he pay Law Society costs in the amount of \$1,0000.

DATED this 26th day of September, 1996

"R. Murray"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th January, 1997

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF William Henry Giles,
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 28th day of June, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that William Henry Giles be suspended for one month and indefinitely thereafter until he has complied with the request of the Law Society set out in the letter to him dated April 5, 1994 from Lorraine Campbell and pays costs to the Society in the amount of \$2,000.

DATED this 26th day of September, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Grenville Carson Price, 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 16th day of September, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th January, 1997

CONVOCATION HEREBY ORDERS that Grenville Carson Price be suspended for a period of one month, commencing as of the date of this Order, and indefinitely thereafter until he complies with the Society's requirements set out in Complaint D393/95 particular 2(d).

DATED this 24th day of October, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Larry George Frolick,
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 12th day of September, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Larry George Frolick be suspended for a period of one month and indefinitely thereafter until his filings have been completed, such suspension to commence at the conclusion of his administrative suspension.

DATED this 24th day of October, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th January, 1997

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Catharine Leila Odell,
of the City of Scarborough, 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 September, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Catharine Leila Odell be suspended for one month, commencing at the conclusion of her administrative suspension, and indefinitely thereafter until her filings have been completed and, that she pay Law Society costs in the amount of \$600.

DATED this 24th day of October, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Douglas Robert Wilson,
of the Town of Markham, 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 12th day of September, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Richard Zemla, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th January, 1997

CONVOCATION HEREBY ORDERS that Robert Douglas Wilson be suspended for a period of twenty-one months commencing as of the date of this Order, and that his resumption of practice be conditional upon the terms and conditions set out in his Undertaking to the Law Society of May 14th, 1996.

DATED this 24th day of October, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society;

AND IN THE MATTER OF Roland William Paskar,
of the City of Mississauga, a Barrister and
Solicitor (hereinafter referred to as "the
Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 17th day of September, 1996, in the presence of Counsel for the Society, the Society being in attendance and represented by Rahul Shastri, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Roland William Paskar be reprimanded in Convocation and pay Law Society costs in the amount of \$500 payable within a period of six months.

DATED this 24th day of October, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th January, 1997

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF William Edward Kosar,
of the City of Hamilton, a Barrister and
Solicitor (hereinafter referred to as "the
Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 20th day of September, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that William Edward Kosar be reprimanded in Convocation and that he pay Law Society costs in the amount of \$750.

DATED this 24th day of October, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 9th day of May, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Brian Greenspan, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th January, 1997

CONVOCATION HEREBY ORDERS that Alexandre Brooks be suspended for a period of six months and pay Law Society costs in the amount of \$3,500. Convocation deems the Solicitor to have been effectively suspended from the date of the Report and Decision, the 9th day of May, 1996.

DATED this 24th day of October, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 18th day of June, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Brian Greenspan, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Alexandre Brooks be suspended for a period of three months, commencing as of the date of this Order, and pay Law Society costs in the amount of \$500.

DATED this 24th of October, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th January, 1997

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Louis Nathaniel Rajnauth of the City of Toronto;

AND IN THE MATTER OF an Application for Admission to the Law Society of Upper Canada

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Admissions Committee dated the 11th day of September, 1996 in the presence of Counsel for the Society, the Applicant being in attendance and represented by Glen Hainey, wherein the Application for Admission was granted and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Louis Nathaniel Rajnauth be admitted to membership in the Law Society of Upper Canada, conditional on his completing the educational requirements deemed appropriate by the Society's Director of Education. Convocation further orders that Mr. Rajnauth's practice be restricted as follows: a) he be prohibited from maintaining or operating a trust account, and b) if he chooses to be employed by a solicitor who handles a trust account, that supervising solicitor must be approved by the Secretary of the Law Society.

DATED this 24th day of October, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David James Ashbee, of the Town of Halton Hills, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

24th January, 1997

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 5th day of June, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Martin Peters, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that David James Ashbee be suspended for a period of 18 months, commencing December 1, 1996, and that he pay Law Society costs in the amount of \$13,500 to be paid in monthly installments commencing June 1996 until the date of this order, with the balance payable upon reinstatement at the rate of \$1,000 per month. Convocation further orders that his reinstatement be conditional on his successfully completing Phase III of the Bar Admission Course; and, that upon resuming practice he is not to act on both sides of a real estate transaction, and he is not to perform legal work on, or arrange, mortgage loans to non-institutional lenders.

DATED this 24th day of October, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Morris Aron Baker, 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 12th day of September, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Kenneth E. Howie, Q.C., wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th January, 1997

CONVOCATION HEREBY ORDERS that Morris Aron Baker be suspended for a period of 12 months, commencing as of the date of this Order, and continuing indefinitely until he pay the Law Society costs in the amount of \$5,000.

DATED this 24th day of October, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Robert Alvin McKnight
of the City of Hamilton, 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 12th day September, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Robert Alvin McKnight be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 24th day of October, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th January, 1997

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Michael Barry Biderman, of the City of London, 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 12th day of September, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Michael Barry Biderman be suspended for a period of three months, such suspension to commence at the conclusion of his administrative suspension; and, that his reinstatement be conditional on his payment of Law Society costs in the amount of \$1,500. Convocation further orders that upon the resumption of practice and for a period of three and one half years thereafter, he practise only as an employee or associate of a member in good standing, and that during this period he shall not operate a trust account.

DATED this 24th day of October, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Moshe Ted Ronen, 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 15th day of November, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Douglas Crane, Q.C. and Edward Morgan, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th January, 1997

CONVOCATION HEREBY ORDERS that Moshe Ted Ronen be reprimanded in Convocation and pay Law Society costs in the amount of \$1,000.

DATED this 28th day of November, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Lawrence Zimmerman, 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 15th day of November, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Douglas Crane, Q.C. and Edward Morgan, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Lawrence Zimmerman be reprimanded in Convocation and pay Law Society costs in the amount of \$1,000.

DATED this 28th day of November, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th January, 1997

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Kishore Premji Tanna,
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 13th day of September, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Mendel Green, Q.C., wherein the Solicitor was granted relief from the Order of Convocation dated June 23, 1994 and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Kishore Premji Tanna be reinstated, effective as of the date of this Order, on the following conditions:

1. That he be required to practise under the supervision of a member in good standing with the Law Society and approved by the Secretary of the Law Society for a period of one year and thereafter for as long as it may be determined appropriate by the Secretary;
2. That there be co-signing controls on the Solicitor's general and trust accounts for a minimum period of one year and thereafter for as long as it may be determined appropriate by the Secretary;
3. That he be required to provide the Law Society with monthly reconciliations for his trust and general accounts and copies of his trust and general receipt and disbursement journals before the end of the next following month for a period of one year and thereafter for as long as it may be determined by the Secretary;
4. That he be required to participate in the Practice Review Program and comply with any recommendations made in the course of his involvement with the Program.

DATED this 28th day of November, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th January, 1997

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Charles John Lewonas,
of the City of Woodstock, 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 16th day of May, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Charles John Lewonas be granted permission to resign his membership in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 28th day of November, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Lawrence Charissios
Ducas, of the City of Scarborough, 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 June, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th January, 1997

CONVOCATION HEREBY ORDERS that Lawrence Charissios Ducas be granted permission to resign his membership in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 28th day of November, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Ernest Abel Benevides,
of the City of North York, 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 24th day of May, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Thomas J. Lockwood, Q.C., wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Ernest Abel Benevides be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 28th day of November, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th January, 1997

CONVOCATION ROSE AT 3:50 P.M.

Confirmed in Convocation this 28 Day of February 1997


Treasurer