

MINUTES OF CONVOCATION

Thursday, 28th March, 1991
9:30 a.m.

PRESENT:

The Treasurer (Mr. James M. Spence, Q.C.), Arnup, Bastedo, Bellamy, Bragagnolo, Callwood, Campbell, Carey, Cass, Chapnik, Copeland, Farquharson, Ferguson, Ferrier, Furlong, Graham, Ground, Guthrie, Hall, Hickey, Howland, Jarvis, Kiteley, Krishna, Lamek, Lamont, Levy, McKinnon, Murphy, Manes, O'Connor, Pepper, Rock, Shaffer, Somerville, Thoman, Topp, Wardlaw, Weaver and Yachetti.

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"IN PUBLIC"

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MOTIONS

It was moved by June Callwood, seconded by Roger Yachetti THAT:

- (a) Vern Krishna be elected a Benchers to fill the vacancy created by the appointment of the Honourable Bruce Noble to the Ontario Court of Justice.

Carried

- (b) Bernard Shaffer be added as a member of the Finance and Administration Committee.

Carried

- (c) The following Benchers be appointed to the Special Committee on Paralegals and Access to Legal Services: Allan Rock (Chair), Frances Kiteley (Vice-Chair), Harvey Strosberg, Clay Ruby, Jack Ground, James Wardlaw, Laura Legge, Donald Lamont, Bernard Shaffer, Netty Graham, Dan Murphy and Robert Carter.

Carried

- (d) The following persons be appointed to the Equity in Legal Education and Practice Committee: Harvey Strosberg (Chair), Maurice Cullity, Allan Rock, Anne-Marie Stewart and Rosalie Abella.

Carried

It was moved by Donald H.L. Lamont, seconded by Hugh Guthrie THAT Convocation ratify the two applications made by the Under Treasurer on behalf of the Law Society of Upper Canada, for financial assistance in respect of the costs of repairing the roof over the Benchers' quarters, one to the Ministry of Culture and Communications for a Cultural Facilities Improvement Grant and one to the Ontario Heritage Foundation for a Capital Grant in Aid of an Architectural Conservation Project, and confirm that it was the intention of Convocation in approving the repairs to the roof over the Benchers' quarters that such applications be made.

Carried

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FINANCE AND ADMINISTRATION COMMITTEE

Mr. Ground presented the Report of the Finance and Administration Committee of its meeting on March 7th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of March 1991 at three o'clock in the afternoon, the following members being present: Messrs. Ground (Chair), Ferrier, Hall, Lamont and Topp.

A.

ADMINISTRATION

1. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 35 members who have not complied with the requirements respecting annual filing and who have not paid the late filing fee.

In all 35 cases all or part of the late filing fee has been outstanding four months or more. The 35 members owe \$44,220.00 of which \$15,250.00 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 35 members be suspended on March 28th 1991 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see page

2. (a) SUSPENSION OF MEMBERS - ARREARS OF ANNUAL FEES

There are many members who have not paid their Annual Fees which were due on 1st October, 1990.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on March 28th 1991 if the annual fees remain unpaid on that date.

Approved

Note: Motion, see page

(b) SUSPENSION OF MEMBERS - GOODS AND SERVICES TAX

The Committee recommends that the Legislation and Rules Committee draft an amendment to Section 36 of the Law Society Act referring to suspension for failure to pay any fee or levy to provide that a member may be suspended for failure to remit to the Society any tax payable by the member in connection with the payment of any fee or levy.

3. MEMBERSHIP UNDER RULE 50

(a) Retired Members

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

Grant Robert Horace Shaver	Queensville
Campbell Revere Osler	Toronto
Alexander John Alliston	Don Mills
Newton Arthur Thomas	New Hamburg

(b) Incapacitated Members

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

Timothy Roger Leblovic	Burlington
Joseph Robert Breglia	North York

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

Approved

4. RESIGNATION - REGULATION 12

(a) John Edgar Forsyth has applied for permission to resign his membership in the Society and has submitted a Declaration in support. He was called to the Bar on the 21st of March 1975 and practised law only until September 1975. For this reason, the member has requested that he be relieved of publication in the Ontario Reports.

(b) Charles Blaine Bowyer has applied for permission to resign his membership in the Society and has submitted proof of publication in the Ontario Reports of intention to resign. A copy of his Form 2-3 is accepted in lieu of the usual statutory declaration.

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

Approved

B..
INFORMATION

1. CHANGES OF NAME

(a) Members

<u>From</u>	<u>To</u>
Samina Husain	Samina Dattu (Married Name)
Nancy Elizabeth Coll	Nancy Elizabeth Gilbert (Married Name)
Dawn Rochelle Mann	Dawn Rochelle Michaeloff (Married Name)
Sandra Lorraine Harrison	Sandra Lorraine Walters (Married Name)
Paul Bradley Rosenblatt	Paul Bradley Rosen (Court Order)
Elizabeth Margaret Cansdale	Elizabeth Margaret Gearing (Married Name)
Gayle Maureen Howe	Gayle Maureen Preston (Maiden Name)
Veronica Joyce McAlea	Veronica Joyce McAlea Major (Married Name)
Leslie Jean Martin	Leslie Jean Weekes (Married Name)

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Michelle Ann Wylupek

Michelle Ann Gagnon
(Maiden Name)

Heidi Elizabeth Lobley

Heidi Elizabeth Juorio
(Married Name)

Sandra Joan Di Gioacchino

Sandra Joan Murphy
(Married Name)

Noted

(b) Student Members

From

To

Lorna Margaret Plant

Lorna Margaret St Louis
(Married Name)

Colleen Marceline LaBute

Colleen Marceline Norris
(Married Name)

Hilary Jane Eldridge

Hilary Jane Vaughan
(Married Name)

Jessica Ann Growe

Jessica Ann Kimmel
(Married Name)

Tonys Angelopoulos

Anthony Angelopoulos
(Court Order)

Donna Joanne Guidolin

Donna Guidolin
(Court Order)

Nancy Heather Buck Lewis

Nancy Heather Buck
(Maiden Name)

2. MEMBERSHIP RESTORED

Mary Lynne Hogan gave notice under section 31 of The Law Society Act that she had resigned as a Judge of the Ontario Court (Provincial Division) and wished to be restored to the Rolls of the Law Society. Accordingly, her membership was restored effective 1st February 1991.

Noted

3. ROLLS AND RECORDS

(a) Deaths

The following members have died:

William Richard Reed
St. Catharines

Called March 17th 1967
Died October 10th 1990

William Trueman Wood
Ottawa

Called June 29th 1949
Died December 24th 1990

Nahum Qualer
Toronto

Called September 15th 1955
Died January 10th 1991

George Anthony Rubino
Perth

Called March 24th 1972
Died January 23rd 1991

Robert Clark Rankin
London

Called March 28th 1989
Died January 26th 1991

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Ronald Joseph Adams
Cornwall

Called April 12th 1962
Died January 27th 1991

George Grant Baker
Toronto

Called June 29th 1948
Died February 2nd 1991

Eleanor Gertrude Richards
Toronto

Called June 16th 1932
Died February 11th 1991

Noted

(b) Membership in Abeyance

Upon his appointment to the office shown below the membership of the following member has been placed in abeyance under section 31 of The Law Society Act:

David Paul Cole
Toronto

Called March 20th 1975
Appointed to the Ontario Court,
Provincial Division
March 1st 1991

Noted

4. LEGAL MEETINGS AND ENTERTAINMENT

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

March 22nd, 1991

Niagara Moot
Convocation Hall

April 6th, 1991

Phi Delta Phi Dinner
Convocation Hall

April 17th, 1991

Medical-Legal Dinner
Convocation Hall

April 18th, 1991

Lawyers Club Dinner
Convocation Hall

May 4th, 1991

Class of '81 Reunion
Convocation Hall

May 11th, 1991

Class of '56 Reunion
Convocation Hall

May 23rd, 1991

Lawyers Club Dinner
Convocation Hall

May 25th, 1991

Class of '66 Reunion
Convocation Hall

May 30th, 1991

Class of '76 Reunion
Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 28th day of March 1991

"J. Ground"
Chair

THE REPORT WAS ADOPTED

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BANKING RESOLUTIONS

It was moved by Jack Ground, seconded by Ross Hall THAT

1. That the Society appoint The Toronto-Dominion Bank ("TD") as a banker of the Society and that the Society establish one or more bank accounts with TD.
2. That the signing officers of the Society on its accounts(s) with TD shall consist of the Treasurer, Under Treasurer, Director of Finance, Deputy Director of Finance, Secretary, Deputy Secretary, Chair of Finance, Vice-Chair of Finance and designated Benchers who are members of the Finance and Administration Committee ("signing officers") and:
 - (i) for amounts up to \$10,000 - any one of the signing officers;
 - (ii) for amounts from \$10,000.01 to \$25,000 - any one of the signing officers together with one of the Treasurer, Under Treasurer, Chair or Vice Chair of Finance and designated benchers who are members of the Finance and Administration Committee;
 - (iii) for amounts over \$25,000 - any one of the signing officers together with one of the Treasurer, Chair or Vice Chair of Finance and designated Benchers who are members of the Finance and Administration Committee;

is/are hereby authorized and empowered on behalf of the Society from time to time:

- (a) to sign, make, draw, accept, endorse, execute and deliver cheques, promissory notes, bills of exchange, orders for the payment of money (including cheques, promissory notes, bills of exchange and orders for the payment of money payable to the individual order of any "signing officer(s)" of the Society), drafts, acceptances and all agreements (including Operation of Account Agreements) documents and instruments obligating the Society to TD or as required by TD or as may relate to any banking business or any borrowings or advances by way of overdraft or otherwise or any liability or obligation heretofore, now or hereafter made or incurred directly or indirectly by the Society and/or heretofore, now or hereafter made or incurred by TD for the account or benefit of the Society, and to receive from TD all or any securities and property held by TD for safekeeping on behalf of the Society and to sign and deliver receipts therefor;
 - (b) to borrow money from TD by obtaining loans or advances by way of overdraft or otherwise;
3. That any one of the signing officers is hereby authorized on behalf of the Society from time to time:
 - (a) to deposit with or negotiate or transfer to TD (but for the credit of the Society only) all or any cheques, promissory notes, other bills of exchange, orders for the payment of money, and other instruments, whether negotiable or not, and for such purpose to deliver all or any of the foregoing to TD signed and endorsed or purporting to be signed and endorsed with the name of the Society impressed thereon by a rubber stamp or otherwise; and
 - (b) to arrange, settle, balance, certify and confirm all books and accounts between the Society and TD and to receive all paid cheques, vouchers, bills of exchange, instruments and any commercial documents or papers relating thereto and all unpaid and unaccepted bills of exchange and to sign and deliver to TD TD's forms of settlement and confirmation of balances and release and any receipts for all or any of the foregoing.

4. That any agent or employee of the Society is hereby authorized to receive all paid cheques, vouchers, bills of exchange, instruments, account statements, and any commercial documents or papers relating thereto and all unpaid and unaccepted bills of exchange.
5. That any agreements, documents and instrument signed or purporting to be signed in the manner set forth in this resolution shall be valid and binding upon the Society.
6. That for the purposes set forth in this resolution the Society hereby delegates any and all powers which it may have to the signing officers or other persons who are herein named or referred to by office or position with the Society and each of them.
7. That TD be supplied with a list of all signing officers or other persons who are herein named or referred to by office or position with the Society and that TD is hereby authorized to rely upon such list until it has received an amended list and so on from time to time.
8. That this resolution shall remain in force and be binding upon the Society as regards TD until written notification that this resolution has been repealed or replaced has been received for TD by the Manager of the branch of The Toronto-Dominion Bank where each account is situated.

Carried

It was moved by Jack Ground, seconded by Ross Hall THAT

1. That the Society be authorized to borrow up to \$12,000,000 from The Toronto-Dominion Bank ("TD") under a revolving credit facility established pursuant to an offer of financing addressed by TD to the Society dated March 15, 1991 (the "Offer"), to execute and deliver such other documents or instruments as may be required by TD from time to time and to do all acts and things as may be required by TD from time to time for the purpose of giving effect to this resolution and to the matters contemplated by the Offer.
2. That the Chair of Finance and the Under Treasurer be and they are hereby authorized and directed to execute and deliver on behalf of the Society, whether under seal or otherwise, the Offer with such alterations, additions, amendments and deletions as may be approved by them (and such execution shall be conclusive evidence of such approval).
3. That any one of the Treasurer, Under Treasurer, Director of Finance, Deputy Director of Finance, Secretary, Deputy Secretary, Chair of Finance, Vice-Chair of Finance and the designated Benchers who are members of the Finance and Administration Committee be and is hereby authorized and directed to execute and deliver such other documents or instruments as may be required TD from time to time and to do all acts and things as may be required by TD from time to time for the purpose of giving effect to this resolution and to the matters contemplated by the Offer.

Carried

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28th March, 1991

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

It was moved by Jack Ground, seconded by Ross Hall THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from the 28th of March 1991 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND: FAILURE TO PAY ANNUAL FEES

It was moved by Jack Ground, seconded by Ross Hall THAT, having not paid their annual fees for the period July 1st 1990 to June 30th 1991, the rights and privileges of each of the members on the attached list be suspended for a period of one year from March 28th 1991 and from year to year thereafter, or until their fees are 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)

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APPLICATION FOR COSTS - ANTHONY MICHAEL SPECIALE

The reporter was sworn.

Mr. Lamek did not participate.

Mr. Topp put before Convocation a Report of the Discipline Committee chaired by Mr. Bastedo.

(copy of Report in Convocation file)

Mr. Gavin MacKenzie appearing for the Society requested that the hearing Committee be authorized to make recommendations to Convocation on costs.

It was moved by Mr. Topp, seconded by Mr. Lamont that the discipline committee which heard the complaint against the solicitor be authorized to receive submissions on the issue of costs and to make a recommendation on the issue of costs to Convocation.

Carried

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DISCIPLINE COMMITTEE

Re: MICHAEL BARRY BIDERMAN, London

Mr. Topp placed the matter before Convocation.

The reporter was sworn.

Mr. Robert Conway appeared for the Society and Mr. Roy Stephenson appeared for the solicitor who was present.

28th March, 1991

Convocation had before it the Report of the Discipline Committee dated 9th January, 1991 together with the Affidavit of Service sworn 23rd January, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail (marked Exhibit #1) and the Acknowledgement, Declaration and Consent signed by the solicitor 28th March, 1991 (marked Exhibit #2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Philip M. Epstein, Chair
Roger D. Yachetti
Ross E. Hall

In the matter of
The Law Society Act
and in the matter of

J. Robert Conway
for the Society

MICHAEL BARRY BIDERMAN
of the City
of London
a barrister and solicitor

Barry C. Fick
for the solicitor

Heard: December 11, 1990

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 1, 1990, complaint D158/90 was issued against Michael Barry Biderman, alleging that he was guilty of professional misconduct.

The matter was heard on December 11, 1990, by this Committee, composed of Philip M. Epstein, Q.C., as Chair, Roger Yachetti, Q.C. and Ross E. Hall. Mr. Biderman attended the hearing with his counsel, Barry C. Fick. Robert Conway appeared at the counsel for the Society Decision.

THE COMPLAINT

The following particulars of professional conduct were admitted by Mr. Biderman and were found established.

- (a) during the period July 21, 1987 and December 16, 1988 he misappropriated the sum of \$32,150.41, more or less, from his mixed trust account;
- (b) in an attempt to cover up his series of misappropriations he created or maintained false client trust ledger cards which either omitted or falsely recorded transactions;
- (c) he failed to prepare trust comparisons for his practice of law which would have disclosed his misappropriations.

EVIDENCE

The evidence before the Committee was contained partly in the report of William B. Simpson, a Law Society Audit Examiner, dated March 28, 1990 and in addition Mr. Biderman gave evidence and was cross-examined.

28th March, 1991

The solicitor admitted that the report of William B. Simpson contained an accurate statement of the facts. That report reads as follows:

"I have made an examination of the books and records of the above member in accordance with the provisions of section 18 of the Regulation made pursuant to the Law Society Act.

Mr. Biderman was called to the bar in 1976 and since he has practised as a sole practitioner. Mr. Biderman described his practice as primarily corporate commercial.

I attended at Mr. Biderman's office on January 6, 9, 10, 11 and 13, 1989.

At the time of my visit Mr. Biderman told me that for the fiscal year July 1, 1986 to July 30, 1987 he had not prepared any trust comparisons, however his accountant had prepared a trust list for the fiscal year-end. For the period July 1, 1987 to June 30, 1988, again no trust comparisons were prepared; the accountant at this time recorded on Mr. Biderman's annual filing of his Form 2/Form 3 that no trust comparisons had been prepared.

From July 1, 1988 to the time of my visit in January 1989 no trust comparisons had been prepared.

Co-signing controls were placed on Mr. Biderman's trust account at the Royal Bank of Canada, Richmond Street, London, trust account number 101-491-9, hereinafter referred to as trust account number 1. Trust account number 101-492-7, hereinafter referred to as trust account number 2, was opened on January 6, 1989. A new accountant, Mr. Richard Kohn of the firm Marcus & Associates in London, agreed to co-sign cheques on both trust accounts.

At the time of my visit Mr. Biderman told me that since July 1987 to December 1988 he had borrowed funds from his trust account. From the details supplied by Mr. Biderman a schedule of trust shortages is attached as Appendix 1. The following are examples of individual amounts that make up part of the trust shortages shown in the schedule referred to as Appendix 1.

Client trust ledger account for Gorvan Enterprises Ltd.

On the following dates Mr. Biderman transferred funds from trust account number 1 at the Royal Bank of Canada to his general account:

<u>Date</u>	<u>Cheque #</u>	<u>Amount</u>	<u>Appendix #</u>
November 16, 1987	4114	\$1,250.00	2
December 1, 1987	4136	1,500.00	3
December 15, 1987	4119	750.00	4

At the times the above cheques were drawn there were no funds on deposit in the trust account for the client Gorvan Enterprises, for which Mr. Biderman was acting in connection with a sale. The disbursement entries for these three cheques drawn were not recorded on the client's trust ledger card, which is attached as Appendix 5.

The sale closed on January 5, 1988, and Mr. Biderman then prepared an account for \$6,567.75, and his secretary prepared a cheque to Mr. Biderman for his fees of \$6,567.75. At the time of signing the cheque Mr. Biderman altered the amount to \$3,067.75, the difference of \$3,500.00 being the total Mr. Biderman had already taken from his trust account by cheques in Appendices 2, 3, and 4. A copy of the statement of account dated January 5, 1988 to Gorvan Enterprises Ltd. is attached as Appendix 6.

28th March, 1991

A copy of the trust cheque number 4139 for \$3,067.75 dated January 5, 1988 is attached as Appendix 7.

Client trust ledger account for Gardner Auctions Inc.

On the following dates Mr. Biderman transferred funds from his trust account number 1 at the Royal Bank of Canada to his general account, which Mr. Biderman said were on account of his fees in connection with a collection matter he was dealing with for this client.

<u>Date</u>	<u>Cheque #</u>	<u>Amount</u>	<u>Appendix #</u>
January 19, 1988	4173	\$1,435.75	8
January 19, 1988	4175	1,000.00	9

At the times the above cheques were drawn Mr. Biderman falsely recorded on the client ledger card a receipt of funds into the trust account of \$2,435.75 on January 19, 1988. A copy of the client ledger card is attached as Appendix 10. However these funds were not received in the trust account until March 11, 1988. A copy of the trust bank statement for March 1988 is attached as Appendix 11.

A copy of Mr. Biderman's fee billing dated January 12, 1988 for \$2,435.75 is attached as Appendix 12.

Clients' trust ledger accounts for:

- (i) Mr. & Mrs. Dyer
- (ii) Central Terminal Warehousing

On April 18, 1988 Mr. Biderman transferred \$2,000.00 from trust account number 1 at the Royal Bank of Canada on account of fees for Mr. & Mrs. Dyer and Central Terminal Warehousing in connection with their sales on which he was acting:

<u>Date</u>	<u>Cheque #</u>	<u>Amount</u>	<u>Appendix #</u>
April 18, 1988	4342	\$2,000.00	13

At the time Mr. Biderman drew the above cheque there were no funds in the clients' trust accounts for Mr. & Mrs. Dyer or Central Terminal Warehousing. The disbursement entry is not recorded for this withdrawal on either client trust ledger card. A copy of the client trust ledger card for Mr. & Mrs. Dyer is attached as Appendix 14. A copy of the client trust ledger card for Central Terminal Warehousing is attached as Appendix 15. Mr. & Mrs. Dyer's sale closed on June 15, 1988, and on June 15, 1988 Mr. Biderman sent his fee billing to Mr. & Mrs. Dyer for \$2,109.75. A copy of the account is attached as Appendix 16. Mr. Biderman's secretary prepared a cheque on the trust account for \$2,109.75 dated June 15, 1988 payable to Mr. Biderman for his fees. At the time of signing the cheque Mr. Biderman changed the cheque amount to \$1,109.75. A copy of cheque number 4478 is attached as Appendix 17. The difference of \$1,000.00 is half of the \$2,000.00 Mr. Biderman took on April 18, 1988 by cheque number 4342, Appendix 13.

Central Terminal Warehousing's sale closed on June 20, 1988, and on June 20, 1988 Mr. Biderman sent his fee billing to them for \$1,668.25. A copy of the account is attached as Appendix 18. Mr. Biderman's secretary prepared a cheque dated June 20, 1988 for \$1,668.25 for Mr. Biderman's fees. At the time of signing the cheque Mr. Biderman changed the amount on the cheque to \$668.25. A copy of cheque number 4502 is attached as Appendix 19.

The difference of \$1,000.00 is the remaining half of the \$2,000.00 Mr. Biderman took on April 18, 1988 by cheque number 4342, Appendix 13.

28th March, 1991

Client's trust ledger account for Talje Developments

On October 14, 1988 Mr. Biderman transferred the following amount from trust account number 1 to his general account, which he states was for fees in connection with a sale he was handling for Talje Developments:

<u>Date</u>	<u>Cheque #</u>	<u>Amount</u>	<u>Appendix #</u>
October 14, 1988	4783	\$2,000.00	20

At the time Mr. Biderman wrote the above cheque there were no funds in the client trust ledger account for Talje Developments. A copy of the client ledger card is attached as Appendix 21.

The sale closed on December 16, 1988 and Mr. Biderman's secretary wrote a cheque for \$2,425.75 for Mr. Biderman's fees. At the time of signing the cheque Mr. Biderman altered the cheque to \$425.75 to off-set the amount he had already received. A copy of cheque number 4877 dated December 16, 1988 is attached as Appendix 22. A copy of Mr. Biderman's account dated December 15, 1988 is attached as Appendix 23.

Monthly Trust Comparisons

Monthly trust comparisons for the period July 31, 1987 to December 31, 1988 for trust account number 1 have now been brought up to date, and differences between total trust obligations and total trust funds on deposit are disclosed. However these differences do not agree with the shortages shown in the trust comparison for the shortages shown in the trust comparison for January 31, 1988. The bank reconciliation shows a shortage in the trust account of \$2,012.04, whereas the shortage shown on the schedule of trust shortages referred to as Appendix 1, shows a shortage of \$3,435.75. A copy of the trust comparison for January 31, 1988 is attached as Appendix 24.

I spoke to Mr. Biderman's accountant, Mr. Kohn, who told me that he did not prepare the trust comparisons for the period July 31, 1987 to December 31, 1988 as he could not understand Mr. Biderman's records.

Mr. Biderman informed me that these were prepared by an ex-secretary. From the original information Mr. Biderman gave me, and from my investigation, it appears that the trust comparisons for the period mentioned are incorrect.

(see Appendices 1 and 2 in the Report)

THE FINDING OF THE COMMITTEE AS TO PROFESSION

The Committee accepts the admissions and finds Mr. Biderman guilty of professional misconduct as alleged.

RECOMMENDATION AS TO PENALTY

We recommend that Michael Barry Biderman be suspended for a period for eighteen (18) months, with the following additional terms and conditions:

That Mr. Biderman shall be prohibited from operating a trust account or dealing with trust monies for three and one-half years after the expiration of his suspension.

REASONS FOR RECOMMENDATION

Mr. Biderman is forty-two years of age, has been married for twenty years and has three children, all boys being 12-1/2, 14 and 17 years of age, respectively. He has lived in London most of his life and graduated from the University of Western Ontario. He was called to the bar in 1977 and this is the first time he has appeared before a Discipline Committee of the Law Society.

Mr. Biderman practiced with the firm of Dyer, Brown for four years and left there in March of 1981, apparently because a partnership was not available to him. It was, however, an amicable parting and Mr. Biderman thus began to practice on his own. In 1984 he began sharing space with two other lawyers and in 1987 that arrangement broke up and he joined in a new shared space arrangement with Mr. Fick. Nevertheless, Mr. Biderman was responsible for his own practice.

Mr. Biderman has been active in the London community. He is involved in organized sports, has coached baseball in the summer and has been President of the North London Sports Association. He was a member of the board and for a time was Chairman of the Jewish Community Centre in London and a member of the London District Cultural Association. He has been active as a chairperson of the Cemetery Committee for the London Jewish Community. The letters of reference submitted on his behalf appear to indicate that he is held in high regard and that the behaviour with which he is charged is aberrational.

Mr. Biderman owns a home in the London area worth about \$225,000.00, which is mortgaged to the extent of \$90,000.00. He currently owes his banker about \$29,000.00 and owes some money to his father. In July of 1987 the bank was pressing him with respect to this line of credit which was then overdrawn. The bank placed Mr. Biderman on a regular monthly payment scheme and limited his overdraft privileges. Mr. Biderman found himself with a serious cash flow problem and for the first time began to borrow money from his trust account to cover short-term bills such as his secretaries or Revenue Canada. Mr. Biderman apparently took these monies in anticipation of transactions closing within days or weeks of the misappropriation. In each case, when he took the money he intended to replace it by fees that were due from a transaction scheduled to close. Accordingly, as can be seen from Appendix 1 of Mr. Simpson's report, the short-term "borrowings" were generally for a short period of time and at least between July of 1987 and December of 1987 Mr. Biderman replaced the "borrowed monies" as transactions closed. Thereafter, commencing in January of 1988 he began to run behind and the misappropriation reached a peak of almost \$6,000.00 by May of 1988. As again can be seen from Appendix 1, Mr. Biderman was taking money out of the trust account and replacing it from time to time. By August of 1988 the amount was down to \$400.00. It arose again in late 1988, but even before Mr. Simpson attended on his office, the outstanding balance was \$400.00. The Committee is advised that there is now no shortage in the trust account.

It appears that when Mr. Simpson attended at Mr. Biderman's office, Mr. Biderman fully co-operated and disclosed fully his misappropriations between July of 1987 and December of 1988. All in all, it appears that Mr. Biderman took monies from his trust account on thirty-two separate occasions. Fortunately, no client lost any money and had it not been for the spot-audit we suppose that these misappropriations would never have been detected in view of the fact that no client suffered any loss.

Mr. Biderman was quite frank and refreshingly candid before this Committee. He did not attribute the defalcations to problems with drugs, alcohol, depression or any psychiatric illness. He is candid enough to admit that he got caught in a credit squeeze and, therefore, knowingly wrote trust cheques on his trust account in anticipation of fees he was to receive. He tells us that each time he wrote the cheques he rationalized that he was taking his fees from deals that were about to close and no doubt this was true. It does not excuse Mr. Biderman's conduct, but it is his explanation.

28th March, 1991

Mr. Biderman and his counsel say that there was no intent to defraud. Nevertheless, Mr. Biderman accepts that what he did was wrong and that this amounts to misappropriation of trust funds.

Cross-examination by counsel for the Society demonstrated that Mr. Biderman had alternate sources of funds to go to rather than his trust accounts. He could have refinanced his home or he could have gone to his father for more monies. The defalcations extended over a period of one and one-half years. It appears that Mr. Biderman's pride got in the way of seeking more funds from his family, nor did he press his wife into taking on full-time employment in order to help his cash flow problems.

During the course of lengthy argument, counsel for the Society quite properly put before the Committee a whole series of cases in which misappropriation has led to disbarment. The most significant of those cases are perhaps the Lapedus decision and the Capp decision. In both those decisions, the Committees recommended something short of requiring the solicitor to leave the profession, but in both cases the Committee was overruled by Convocation.

Counsel for the Society says there are no extenuating circumstances. There are clear misappropriations over a lengthy period of time. Accordingly, the solicitor should be disbarred.

Counsel for the solicitor says that Mr. Biderman had every intention to replace funds and frequently did so. He pointed out that Mr. Biderman co-operated fully with the Society and repaid all of the defalcations. Counsel for the solicitor pointed to the number of cases in which the Society ordered a suspension rather than a disbarment.

The Committee finds this to be a difficult case.

We were impressed with Mr. Biderman's background, his forthright testimony, his refusal to look for an excuse and his candid admission of wrong-doing. We are mindful that no clients lost any monies and that all of the trust shortages have been repaid. We, nevertheless, regard this as an extremely serious matter. Nevertheless, giving this the best consideration that we can, we do not think it is an appropriate case for Mr. Biderman to be required to leave the profession. We believe Mr. Biderman's co-operation, candour and willingness to shoulder the responsibility for these acts are sufficient extenuating circumstances that the penalty should be something less than disbarment or permission to resign.

Mr. Biderman is a sole practitioner and a suspension for a lengthy period of time will be a heavy penalty indeed. In all of the circumstances, we think the appropriate disposition of this matter is to suspend Mr. Biderman for a period of one and one-half years and require thereafter that he not be entitled to administer a trust account for three and one-half years after his suspension ceases.

No doubt, as in some other cases, disbarment or resignation is clearly within the range of appropriate penalties for Mr. Biderman. The Committee was very cognizant of that fact and understands the position of counsel for the Society. Nevertheless, having had the opportunity to observe Mr. Biderman and review the history of this matter, we do not think that the ultimate penalty is required in this case for the protection of the public. We believe that the penalty recommended by this Committee adequately protects the public and serves the ends of justice.

ALL OF WHICH is respectfully submitted

DATED this 9th day of January, 1991

"P. Epstein"
Philip M. Epstein, Q.C.
Chair

It was moved by Mr. Topp, seconded by Mr. Lamont that the Report of the Discipline Committee be adopted.

No representations by either counsel were made as to the Report.

The Report was adopted.

It was moved by Mr. Topp, seconded by Mr. Lamont that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended for 18 months with additional terms and conditions, be adopted.

Submissions by counsel were made on the issue of penalty.

Counsel for the solicitor sought a shorter suspension period and that Mr. Biderman be prohibited from practising alone after the expiration of the suspension and be subject to the restrictions regarding the operation of a trust account set out in the original Report.

Counsel for the Society sought a penalty of disbarment or permission to resign.

Counsel took questions from the Bench.

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

It was moved by Ms. Graham, seconded by Mr. Farquharson that the solicitor be permitted to resign and if he refuses that he be disbarred.

Mr. Ground moved an amendment to Mr. Topp's motion that the solicitor be prohibited from practising alone for a period of 3 1/2 years following his reinstatement.

It was moved by Mr. Rock, seconded by Ms. Callwood that the solicitor be suspended for 6 months and be prohibited from operating a trust account for 3 1/2 years and from practising alone after the expiration of the suspension for a period of 3 1/2 years and that Convocation give Reasons on their decision.

Messrs. Arnup, O'Connor, Cass and Copeland entered Convocation and did not participate in the debate.

The matter was stood down.

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ADMISSIONS COMMITTEE

Mr. Guthrie presented the Report of the Admissions Committee of its meeting on March 7th and an Addendum dated March 28th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of March, 1991 at 9:30 a.m., the following members being present: Ms. Peters (Chair), and Messrs. Guthrie and Lamont.

B.

ADMINISTRATION

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

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

Giuseppa Bentivegna
Anna Marie Butler
Hayim Calof
Eymys Michael Power

Approved

Transfer from British Columbia

A member of the British Columbia Bar has applied to transfer but does not meet the requirement of Regulation 4(1) of having practised three of the last five years in one or more common law provinces.

The applicant asked that his experience since 1987, which includes work as a legal assistant, a Human Rights Officer and a complaints officer with the Law Society of England and Wales, be taken as meeting the requirements of Regulation 4(1).

The Committee had before it an affidavit from the applicant, describing the nature of work in each of the law related positions.

The Committee, after reviewing the material was of the view that the applicant's experience did not meet the requirements of Regulation 4(1) and accordingly, he must complete the Bar Admission Course subject to whatever dispensation in regard to articling that may be given by the Legal Education Committee.

2. DIRECT TRANSFERS - QUEBEC - REGULATION 4(2)

The following has met all the requirements to transfer under Regulation 4(2):

Claude Leduc

Approved

3. APPLICATIONS - FOREIGN LEGAL CONSULTANTS

Mark Carmel has applied to become licensed as a foreign legal consultant in Ontario.

Mr. Carmel was called to the Bar of the state of New York on the 24th day of February, 1988 and has practised in that jurisdiction from that date to the present.

In his letter of application dated the 20th February, 1991, he states that since his graduation from the Touro College School of Law (in the state of New York) in 1985 he has gained more than four years of legal experience.

Mr. Carmel is self-employed in the state of New York and seeks to set up a foreign legal consultant office in Ontario at his own request.

In an earlier letter, dated the 30th of January, 1991, the applicant asks permission to submit his application to become licensed prior to obtaining professional liability insurance, as in order to obtain the insurance the premium is roughly \$1,500.00 U.S. dollars, a substantial expense for his office. In his letter of the 20th February, 1991, he repeats that he understands that approval of his application

will be subject to his providing proof of professional errors and omissions insurance in an amount and form satisfactory to the Law Society and undertakes to provide what is necessary if his application is accepted. The Secretary wrote back informing Mr. Carmel that he may apply in advance of obtaining professional liability insurance.

Mr. Carmel undertakes to take up actual residence in Ontario as soon after granting the license as is practicable.

Mr. Carmel's application is complete and, apart from proof of professional liability, has filed all necessary forms and undertakings including an undertaking by the applicant that he will restrict his practice as a foreign legal consultant to advising on the law of the state of New York.

The Committee approved the application subject to Mr. Carmel filing proof of insurance.

4. ADMISSION OF STUDENTS-AT-LAW

Bar Admission Course

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

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

1081. Akey, Michael Christopher	B.A. Queen's/86; LL.B. Queen's/89;
1082. Aubin, Marie Irene Louise	B.Soc.Sc. Ottawa/86; LL.B. Ottawa/89;
1083. Booth, John Geoffrey	B.Sc. Guelph/86; LL.B. Windsor/89;
1084. Botz, Ursula	B.A. British Columbia/85; M.A. Toronto/86; LL.B. Dalhousie/89;
1085. Boychuk, Daryl Patrick	B.A. Regina/84; LL.B. Western/89;
1086. Chappel, Deborah Lynn	B.A. Toronto/86; LL.B. Queen's/89;
1087. Colombo, Jonathan Gregory	M.A. Toronto/86; LL.B. McGill/89;
1088. Daley, Sean Leo Kevin	4 yrs. Arts, Memorial; LL.B. Dalhousie/89;
1089. Des Brisay, Helen Jeannette	A.B. Harvard, USA/86; LL.B. Toronto/89;
1090. Deturbide, Michael Gerard	B.Sc. Dalhousie/79; LL.B. Dalhousie/89;
1091. Forrest, Grainne Mary Kaye	B.A. Carleton/85; LL.B. Queen's/89;
1092. Garfield, Matthew Davidson	2 yrs. Arts, Toronto; LL.B. Dalhousie/88;

1093. Henein, Marie Therese	2 yrs. Arts, Toronto; LL.B. York/89;
1094. Henrie, Lise Marie Claire Lafreniere	B.A. Manitoba/86; LL.B. Ottawa/89;
1095. Hoque, Nina Naseema	B.A. Trinity, USA/85; LL.M. Georgetown, USA/89; LL.B. York/88;
1096. Katz, Allan	B.A. Concordia/70; B.C.L. McGill/89; LL.B. McGill/89;
1097. Lametti, David	B.A. Toronto/85; B.C.L. McGill/89; LL.B. McGill/89;
1098. Lawson, Peter Daniel	B.A. St Mary's/86; LL.B. New Brunswick/89;
1099. Lee, Susan Jane	2 Yrs. Admin. York; LL.B. York/89;
1100. Lin, Peter Ping Hang	4 yrs. Arts, McMaster; LL.B. Toronto/89;
1101. Lockwood, Lori Anne	B.A. Alberta/86; LL.B. Alberta/89;
1102. Lovelace, Cheryl Ann	B.A. McGill/85; LL.B. Western/89;
1103. MacCarthy, Erin Elizabeth	B.A. Toronto/86; LL.B. Windsor/89;
1104. MacDonald, Judith Anne	B.A. Dalhousie/83; B.Ed. Mount Saint Vincent/84; LL.B. Dalhousie/89;
1105. Macfarlane, John Harry	B.A. McGill/86; LL.B. Toronto/89;
1106. Macklin, Audrey Marie	B.Sc. Alberta/83; LL.B. Toronto/87;
1107. MacMillan, Wanda Leanne	B.A. Queen's/84; LL.B. York/89;
1108. Markson, Joseph John	B.A. Toronto/85; LL.B. Queen's/89;
1109. Michaud, Anne	B.A. Ottawa/86; LL.B. Ottawa/89;
1110. Miller, Peter Henry	B.Sc. Toronto/84; LL.B. Ottawa/89;
1111. Mills, Alexander Matthew	B.Sc. Guelph/83; M.Sc. Carleton/85; LL.B. Victoria/90;
1112. Montreuil, Maria Marthe	B.Nurs. Moncton/86; B.Ed. Moncton/86; LL.B. Ottawa/89;
1113. Naylor, Ruth Irene Norah	B.A. Carleton/86; LL.B. Ottawa/89;

1114. Netten, Shirley Lynn	2 yrs. Arts, Western; LL.B. Toronto/88;
1115. Nicholas, Susan Louise	B.A. Queen's/82; LL.B. Windsor/89;
1116. Nicolaou, Anastasios Thomas	B.A. York/86; LL.B. York/89;
1117. Nightingale, Ronald Jacob	B.A. Toronto/86; LL.B. Queen's/89;
1118. Noonan-Bayne, Elizabeth Joy	B.A. Mount Allison/86; LL.B. Dalhousie/89;
1119. Normandin, Pierre Gerard	B.Sc. McGill/82; B.C.L. McGill/87; LL.B. McGill/87;
1120. North, William John Jamie	B.A. Alberta/86; LL.B. York/89;
1121. Novick, Randy Gail	B.Comm. McGill/83; LL.B. Western/89;
1122. O'Brien, Michael Howard	B.A. Carleton/88; LL.B. Victoria/89;
1123. O'Connell, Sheilagh Marie	B.A. Ottawa/86; LL.B. York/89;
1124. O'Hanley, James Wayne	B.A. Wilfrid Laurier/83; LL.B. Toronto/89;
1125. O'Melia, Steven James	B.A. Western/86; LL.B. Queen's/89;
1126. O'Neill, Christine Margaret Grace	B.A. Queen's/85; LL.B. York/89;
1127. O'Neill, Garth Andrew	2 yrs. Arts, Queen's; LL.B. Queen's/89;
1128. O'Neill, Robert Charles	2 yrs. Arts, Windsor; LL.B. Windsor/89;
1129. Onischuk, Laura Ann	B.A. Victoria/85; LL.B. British Columbia/89;
1130. Opatovsky, Margaret Pearl	B.A. Western/78; LL.B. York/90;
1131. Opoka-Okumu, Christopher	Joint Committee on Accreditation/89;
1132. Opolko, John	B.A. Western/78; LL.B. York/89;
1133. Orkin, Andrew Jonathan	Mature Student; B.C.L. McGill/88; LL.B. McGill/88;
1134. Owen, Valerie Anne	B.A. Toronto/86; LL.B. Queen's/89;
1135. Pagano, Anthony Carmelo Simeone	B.Comm. McGill/86; LL.B. York/89;
1136. Paine, Stephen Gregory	B.A. Nelson/77; LL.B. Victoria/89;

1137. Panzica, Norman Salvatore, Jr.	B.A. York/85; LL.B. Ottawa/89;
1138. Papageorgiou, Eugenia	2 yrs. Commerce, Queens; LL.B. Western/89;
1139. Parish, Donna Lee	2 yrs. Arts, York; LL.B. Western/89;
1140. Patel, Duriya	3 yrs. Science, Toronto; LL.B. Toronto/89;
1141. Patyk, Lori Elizabeth Joy	B.A. Western/86; LL.B. Saskatchewan/89;
1142. Pavalow, Randee Barbara	Joint Committee on Accreditation/90;
1143. Payette, Normand Joseph	M.A. Carleton/84; LL.B. Ottawa/89;
1144. Peacock, George Cameron	B.A. Saskatchewan/86; LL.B. Saskatchewan/89;
1145. Phillips-Smith, Linda Catherine	B.Sc. Toronto/83; LL.B. Dalhousie/89;
1146. Poschwatta, Norbert Helmut	B.A. Western/86; LL.B. York/89;
1147. Prosen, Mary-Louise Anne	B.A. McGill/83; LL.B. Windsor/89;
1148. Richardson, Sarah Elizabeth	B.A. Toronto/86; LL.B. Dalhousie/89;
1149. Rubin, Janice Patricia	B.A. Toronto/85; LL.B. York/89;
1150. Sadri, Sophie	B.A. British Columbia/84; LL.B. Dalhousie/89;
1151. Senda, Kaichi Gregory	B.A. Calgary/76; LL.B. Alberta/80;
1152. Shea, Terri Lee	3 yrs. Arts, Carleton; LL.B. Toronto/89;
1153. Stang, Philip Dominic	B.Comm. Saskatchewan/89; LL.B. British Columbia/89;
1154. Takahashi, Joan Chizuko	Mature Student; LL.B. York/89;
1155. Tipton-Gill, Neil Philip	B.A. York/89; LL.B. York/90;
1156. Thorn, Eleanor H.	B.A. Queen's/83, M.A. California State, USA/85; LL.B. Alberta/89;
1157. Van Praagh, Shauna Bell	B.Sc. Toronto/86; LL.B. Toronto/89;
1158. Walters, Mark David	B.A. Western/86; LL.B. Queen's/89;

28th March, 1991

1159. Ward, Thomas William	Joint Committee on Accreditation/90;
1160. Watts, Georgina Clare	B.A. Wilfrid Laurier/86; LL.B. Ottawa/89;
1161. Wilson, Andrew James	B.A. Queen's/84; LL.B. Ottawa/89;
1162. Wilson, Daniel Vincent	B.A. Western/84; LL.B. Victoria/89;

Approved

Under General Transfer Provisions
32nd Teaching Term of the Bar Admission Course

Elliott, Richard William	Province of Quebec
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Approved

5. EXAMINATION RESULTS - BAR ADMISSION COURSE TRANSFER EXAMINATIONS

The results of the Bar Admission Course Transfer Examinations held in February 1991 were before the Committee. Sixteen transfer candidates and one requalification candidate sat for the first time.

The following candidates passed:

Glenn Read Anderson
Stephen Ashkenazy
Dougal William Clark
Andrew Michael Cohen
David Ian Kilgour
Stindar Kumar Lal
Brent Avery Latimer
Ian Bruce Lawson
Mitchell Marcus
George Jonathan Pollack
Kimberly Prost
Francois Raymond
Robert Irwin Rotenberg
Richard Salter
Nicholas Spillane
Peter Andrew Westgate

One candidate failed.

Noted

The results of the Bar Admission Course Supplemental Transfer Examinations held in February 1991 were before the Committee. Three transfer candidates and one requalification candidate sat the examinations required to be completed by them at the offices of the Bar Admission Course.

The following candidates passed:

Kathryn Ann Clout
Lynn Denise O'Brien
Daniel Gordon Pole
Peter David Ticktin

Noted

6. EXAMINATION RESULTS - COMMON LAW EXAMINATION

The following candidate was approved by the Committee to proceed under Regulation 4(2). The candidate sat the common law examination at the offices of the Law Society in January 1991. The candidate was identified by number only and the report of the examiners is as follows:

<u>Candidate No.</u>	<u>Paper No.</u>	<u>Marks out of 100</u>
332	5A	37
	5B.3	35

Candidate 332

Province of Quebec

Noted

7. CALL TO THE BAR AND CERTIFICATE OF FITNESS

(a) Transfer from another province - Regulation 4(1)

The following candidates having successfully completed the Bar Admission Course Transfer Examinations, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness:

Glenn Read Anderson	Province of Nova Scotia
David Ian Kilgour	Province of Manitoba
Stindar Kumar Lal	Province of Nova Scotia
Brent Avery Latimer	Province of Alberta
Lynn Denise O'Brien	Province of British Columbia
Daniel Gordon Pole	Province of New Brunswick
Richard Salter	Province of British Columbia
Peter Andrew Westgate	Province of Alberta

Approved

(b) Transfer from another province - Regulation 4(2)

The following candidates having successfully completed the Bar Admission Course Transfer Examinations, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness:

Stephen Ashkenazy	Province of Quebec
Dougal William Clark	Province of Quebec
Andrew Michael Cohen	Province of Quebec
George Jonathan Pollack	Province of Quebec
Francois Andre Raymond	Province of Quebec
Nicholas Spillane	Province of Quebec

Approved

8. OTHER ITEMS

(a) OCCASIONAL APPEARANCES

Regulation 6, which governs occasional appearances provides that:

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

(a) appearing as counsel in a specific proceeding; ... "

28th March, 1991

An Alberta lawyer applied for an occasional appearance in regard to a matter in Ontario. The lawyer is acting for plaintiffs on three actions arising out of the same condominium development.

The Alberta lawyer represents the registered vendor/builder of the condominium development.

The condominium plan was registered and a condominium corporation created. A dispute has arisen between the condominium corporation and the vendor/builder regarding alleged construction deficiencies in the common elements of the condominium complex. Pleadings have been filed in three actions relating to these deficiencies.

One other action is commenced by the first management corporation retained by the condominium corporation to manage the common elements of the condominium complex. The allegation is that the condominium corporation breached the management contract by wrongfully terminating it.

The second action is on behalf of the project mortgagee to permit the payment into court of monies to effect a discharge of notices of lien registered against condominium units by the condominium corporation in request of matters referred to in the litigation between the condominium corporation and the management company.

Also arising out of the dispute are matters involving the Warranty Program and an appeal has been taken to the Commercial Registration Appeals Tribunal. The Alberta lawyer has been retained by the vendor/builder to represent it before the appeals tribunal. Again, the appeal refers to the alleged construction deficiencies.

An objection was raised by an Ontario firm that each of the actions was "a specific proceeding ..." and that the Alberta firm should therefore be required to pay the \$500.00 fee for each of the three actions.

It is to be noted that there is the likelihood that at least two of the actions will be consolidated.

The Committee took the view that the Alberta lawyer need obtain only one occasional appearance to cover the actions which arise out of the same factual situation. One of the purposes of the occasional appearance rule is to ensure that the Law Society is aware of lawyers who are practising in the courts in Ontario and to ensure that the out of province lawyer has adequate insurance coverage. The Committee felt that because of the fact that the actions arose out of a one fact situation, the Alberta lawyer did not need an occasional appearance for each individual action.

(b) REINSTATEMENT AFTER SUSPENSION

Christopher Stanley Godfrey, called to the Bar on the 14th of April, 1978, was suspended on the 26th of February, 1982 for failure to pay the annual fee. It was reported to Convocation on the 15th of February, 1991, that he has successfully completed the Bar Admission Course Transfer Examinations required to be written by those suspended for five or more consecutive years.

He asks that, upon payment of all back fees or upon making suitable arrangements with the Finance Department, he be reinstated.

Approved

Irwin Robert Rotenberg, called to the Bar on the 6th of April, 1982, was suspended on the 25th of February 25th, 1983 for failure to pay the annual fee.

28th March, 1991

Having now successfully completed the necessary requalification examinations, and upon payment of all back fees or upon making suitable arrangements with the Finance Department, he asks to be reinstated.

Approved

(c) PERMISSION TO RESUME PRIVATE PRACTICE

Peter David Ticktin was called to the Bar on the 24th of March, 1982 and has continued membership in the Society as a retired member, following approval of his application under the provisions of the rule relating to incapacitated members. To this date, his status has remained the same.

Having now successfully completed the necessary requalification examinations, and upon filing all necessary documents with the Finance Department, he asks to be allowed to resume private practice.

Approved

(d) POSSIBLE CRIMINAL CONVICTION/GOOD CHARACTER MATTERS

The Committee had before it information pertaining to three Bar Admission students. One student is facing four criminal charges, another is facing a discipline hearing and a third had been censored by another professional organization.

After reviewing the matters, the Committee was of the view that all three incidents warrant a hearing under section 27 of the Law Society Act.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"H. Guthrie"
for Chair

ADMISSIONS COMMITTEE - ADDENDUM - MARCH 28TH, 1991

B.
ADMINISTRATION

1. CALL TO THE BAR AND CERTIFICATE OF FITNESS

Bar Admission Course

28th March, 1991

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

Nan Ellen Brooks

Approved

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"H. Guthrie"
for Chair

THE REPORT AND ADDENDUM WERE ADOPTED

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CALL TO THE BAR

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

Nan Ellen Brooks	32nd Bar Admissions Course
Glenn Read Anderson	Special, Transfer, Nova Scotia
Stephen Ashkenazy	Special, Transfer, Quebec
Dougal William Clark	Special, Transfer, Quebec
Andrew Michael Cohen	Special, Transfer, Quebec
David Ian Kilgour	Special, Transfer, Manitoba
Stindar Kumar Lal	Special, Transfer, Nova Scotia
Brent Avery Latimer	Special, Transfer, Alberta
Lynn Denise O'Brien	Special, Transfer, British Columbia
George Jonathan Pollack	Special, Transfer, Quebec
Daniel Gordon Pole	Special, Transfer, New Brunswick
Francois Andre Raymond	Special, Transfer, Quebec
Richard Salter	Special, Transfer, British Columbia
Nicholas Spillane	Special, Transfer, Quebec
Peter Andrew Westgate	Special, Transfer, Alberta

.....

RESUMPTION OF MICHAEL BARRY BIDERMAN DISCIPLINE COMMITTEE REPORT

Counsel, solicitor, the reporter and public were recalled and informed of the motion for disbarment.

There were no further submissions.

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

The motion for disbarment was voted on and lost.

Mr. Rock's motion was not put.

Mr. Topp's motion being the recommendation as to penalty contained in the Report as amended was adopted.

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

Counsel and the solicitor retired.

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"IN PUBLIC"

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INSURANCE COMMITTEE

Mr. Furlong presented 5 Reports of the Insurance Committee of its meetings on December 27th, 1990, January 10th, February 7th, February 20th and March 7th, 1991.

The Chair agreed to put the December 27th Report over to the April Convocation.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of January, 1991 at one-thirty in the afternoon, the following members being present: Messrs. Furlong (Chair), Scace, Lawrence, Cass, Bragagnolo, Hickey, Wardlaw, Lamont, Epstein and Noble.

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

ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director's Monthly Report is attached as Appendix "A". The format and content of the report will be reviewed by the Director with a view to creating a more concise document.

2. E & O FINANCIAL REPORT

Your Committee reviewed the Errors and Omissions financial statements considering the relationship between budgetary projections and actual expenditures. The expenditures as at November 30, 1990 remain under budget. See Appendix "B".

3. ENTITLEMENT TO EXEMPTION FROM E & O LEVY

A member, employed as In-House legal counsel and, who is currently exempt from the E & O levy, has been requested to perform legal work "for a charitable organization on a gratuitous basis". The member

queried if rendering professional services in such a case would adversely effect the levy exemption. Your Committee is supportive of members' altruistic endeavors that utilize the talents and resources of the profession for the benefit of Society. There is no doubt, however, but that members providing legal services under such circumstances are exposed to risk, as would any member of The Law Society be in the performance of professional services for others. To protect the member and the public from the risk of claims arising in the absence of professional liability insurance, and since it is the members of The Law Society who bear the obligation of paying for the ultimate cost of claims, your Committee is of the view that the appropriate levy would be required. The administrative cost to record each individual member's contributions to charitable organizations and to assess each risk individually is prohibitive.

4. E & O STAFF AUTHORIZATION LIMIT - COUNSEL FEES

The practice regarding the payment of E & O defence counsel fees over \$5,000.00 has been to obtain Benchers approval for such payments. To maximize the efficiency of the E & O senior staff, and to avoid delays, the Director is of the view that the limit requiring Benchers approval should be raised to \$10,000.00, an amount reflecting the lower value of today's dollar, and the increase in rates charged by legal counsel. Your Committee is of the view that such an increase is acceptable since the Director of Insurance will approve any fee payment in excess of \$5,000.00. In addition, your Committee has concluded that all individual fee accounts, regardless of the amount, are to be referred for Benchers approval on any matter where the total defence counsel costs exceed \$75,000.00.

5. LAW SOCIETY OF NFLD

The Law Society of Newfoundland participates in the LSUC Professional Liability Insurance Program. The Chair and the Director recently met with members of the LSNFLD to discuss the insurance program. The meeting, which is part of the Society's endeavors to promote open and effective lines of communication was productive and cordial.

6. E & O CLAIM FILE AUDIT

LPIC Directors have proposed establishing an audit program with respect to E & O claim files. Such a program would be in addition to audits conducted by Law Society auditors and actuaries. One possible format would include periodic audits by an independent expert in addition to an ongoing spot audit program conducted by senior E & O staff. The Director is conducting inquiries with a view to identifying the most qualified independent experts to serve in this capacity, and will report to your Committee at the appropriate time.

7. DESIGNATED FIRM REPRESENTATIVES

The Society has been requested by law firms to supply information to "designated parties" within these firms regarding Law Society activity relating to firm members. The firms will identify the "designated parties", and will obtain the necessary authorization from all firm members permitting the Society to give notice when firm members are involved with matters such as complaints, disciplinary proceedings or claims. Your Committee recommends the implementation of such a voluntary program, the details of which are contained in Mr. Scott Kerr's memo of December 12, 1990.

8. CATASTROPHE/STOP LOSS REINSURANCE

The Director presented the preliminary report on the advisability and feasibility of acquiring stop loss coverage, to limit the Society's exposure with respect to the self-insured retention portion of the E & O program, as well as the possibility of increasing the reinsurer's annual

aggregate limit of liability. The Society's brokers have been contacted, and continue their analysis of the optimum manner to secure stop loss coverage, and an increase in the reinsurer's aggregate. The broker's preliminary comment is that the best avenue may be for the Society to self-fund both concepts, however, further statistical and market analysis is required before any final recommendations can be made.

9. OUTSTANDING ITEMS

(a) Division of Responsibilities - Committee Members/Law Society Staff - Pursuant to discussion of the subject of Committee structure and management responsibilities, and the Committee's general acceptance of the contents of the Director's memo of July 26, 1990, the Director has been requested to incorporate amendments to reflect the Committee's final deliberation on the division of responsibilities. The Director will report on this subject at the next Committee meeting.

(b) Loss Prevention Booklet - The Director will provide an oral report on this publication at the next Committee meeting.

(c) Research and Planning Committee - The Chair of this Committee requested suggestions as to emerging policy issues that might be considered by the Research and Planning Committee. Discussion of this subject had been postponed until the next Committee meeting.

(d) Personal Undertakings - A question has been raised with respect to E & O coverage for claims arising out of personal undertakings. The Director will report on this subject at the next Committee meeting.

(e) New Professional Liability Policy Wording - The Director will provide an oral report with respect to the creation of a new policy wording at the next Committee meeting.

ALL OF WHICH is respectfully submitted

DATED this 11th day of January, 1991

"P. Furlong"
Chair

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

- Item 1 - The Director's Monthly Report for November 1990.
(Appendix "A", pages 1 - 5)
- Item 2 - The Errors and Omissions General Expense Budget - The five month period ending November 30, 1990. (prepared January 3, 1991).
(Appendix "B")

THE REPORT WAS ADOPTED
.....

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of February, 1991 at one-thirty in the afternoon, the following members being present: Messrs. Furlong (Chair), Howie, Hickey, Cass, Lawrence, Lamont, Scace and Wardlaw.

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

ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director's Monthly Report is attached as Appendix "A".

2. E & O FINANCIAL REPORT

The Director's Monthly Report on the Errors and Omissions general expense budget is attached as Appendix "B".

3. C.L.I.A. VOLUNTARY EXCESS PROGRAM - PROVINCE OF ONTARIO

Mr. T. Hennessy, of the Canadian Lawyers Insurance Association, asks if the Society objects to advising members of the CBELA Program when responding to inquiries on excess insurance coverage. Your Committee is of the view that a member making such inquiry should be advised of all excess insurance markets known to the E & O Department. See Appendix "C".

4. PROOF OF INSURANCE REQUIREMENTS - OUT OF PROVINCE LAWYERS

Regarding proof of insurance requirements for out-of-province lawyers, such lawyers are required to provide, over their own signature, a statement that they have professional liability coverage for services rendered in Ontario. Your Committee recommends that Admissions adopt a program requiring such lawyers produce a Certificate of Insurance confirming coverage, and that the minimum per occurrence limit of liability is \$1,000,000.00. The Certificate of Insurance should provide for no termination or cancellation of coverage without prior notice to the LSUC.

5. E & O CLAIM FILE AUDIT

LPIC's Directors proposed establishing an E & O claim file audit program. Having discussed this matter with the Chair, the Director retained an independent expert, Mr. Donald B. Bridge, to conduct a file audit in addition to a program of periodic audits conducted by senior Errors and Omissions staff. Your Committee endorses this decision, and will consider scheduling such an audit annually. See Appendix "D".

6. MEMBERS' ENTITLEMENT TO EXEMPTION FROM E & O LEVY

Previously, your Committee considered a member's request for a continued exemption from the E & O levy in the event the member accepted a request to provide professional service for a charitable organization on a gratuitous basis. Your Committee's conclusion that a levy would be required was followed by a request that the Society assist in such cases by waiving the obligation for the members to individually pay the levy. This could be accomplished by The Law Society paying the levy on behalf of members providing pro bono services to charitable or similar organizations. The Deputy Director has been requested to meet with Mr. Andrew Brockett with a view to establishing a proposal for consideration by the appropriate Committees. See Appendix "E".

7. CATASTROPHE/STOP LOSS REINSURANCE

The Director is investigating acquiring stop loss coverage to limit the Society's exposure under the self insured retention portion of the E & O program, and of increasing the reinsurer's annual aggregate limit of liability. The Director is also investigating obtaining catastrophe reinsurance with respect to the exposure arising out of claims against individual members where the total of such claims exceeds two million dollars in any annual premium period. Due to time constraints presentation of the Director's oral report has been postponed until the next Committee Meeting.

8. PRACTICE ADVISORY BUDGET

A question has arisen with respect to whether or not the Practice Advisory Budget should be included in the E & O General Expense Budget. In light of the fact that the Insurance Committee no longer carries any responsibility for or control over Practice Advisory, your Committee recommends that it would be appropriate to remove the Practice Advisory Budget from the E & O Budget.

9. OUTSTANDING ITEMS

(a) Division of Responsibilities - Committee Members/Law Society Staff - Pursuant to discussion of the subject of Committee structure and management responsibilities, and the Committee's general acceptance of the contents of the Director's report of July 26, 1990, the Director has been requested to amend his report to reflect the Committee's final deliberation on the division of responsibilities. Due to time constraints, discussion of this subject has been postponed until the next Committee Meeting.

(b) Loss Prevention Booklet - The Director reported that progress with respect to the publication of the E & O Loss Prevention Booklet continues. The Director will provide the Committee with regular updates at the appropriate times.

(c) Research and Planning Committee - The Chair of this Committee requested suggestions as to emerging policy issues that might be considered by the Research and Planning Committee. Discussion of this subject has been postponed until the next Committee Meeting.

(d) Personal Undertakings - A question has been raised with respect to E & O coverage for claims arising out of personal undertakings. The Director will report on this subject at the next Committee Meeting.

(e) New Professional Liability Policy Wording - The Director will provide an oral report with respect to the creation of a new policy wording at the next Committee Meeting.

ALL OF WHICH is respectfully submitted

DATED this 8th day of February, 1991

"P. Furlong"
Chair

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

- Item 1 - The Director's Monthly Report for December 1990.
(Appendix "A", pages 1 - 4)
- Item 2 - The Errors and Omissions General Expense Budget for the six month period ending December 31, 1990. (prepared February 4, 1991).
(Appendix "B")
- Item 3 - Letter to Mr. Lin Whitman from Mr. Terence J. Hennessy, General Manager (Canadian Lawyers Insurance Association) dated January 14, 1991 re: Canadian Lawyers Insurance Association (CLIA), Voluntary Excess Program - Province of Ontario.
(Appendix "C")
- Item 5 - Resume of Mr. Donald B. Bridge.
(Appendix "D")

Item 6 - Memo from Mr. Richard Tinsley to Mr. Lin Whitman dated
February 1, 1991 re: Pro Bono Services.

(Appendix "E")

THE REPORT WAS ADOPTED

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TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE INSURANCE COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 20th of February, 1991 at ten-thirty in the forenoon, the following members being present: Messrs. Furlong (Chair), Howie, Lamont, Lawrence, Cass and Hickey.

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

ITEM

1. E & O 1991/1992 BUDGET

The Director presented the preliminary 1991/1992 E & O General Expense Budget which was approved by your Committee. The final version of the 1991/92 Budget will be presented at the March 7, 1991 Committee Meeting.

2. OUTSTANDING ITEMS

(a) Division of Responsibilities - Committee Members/Law Society Staff - The Director presented your Committee with an amended version of his memo of July 26, 1990 addressing the subject of Committee structure and management responsibilities. The Director's memorandum of January 10, 1991 includes several minor alterations suggested by your Committee at a previous meeting. Your Committee approved the contents of the Director's latest memorandum with the recommendation that the text referencing Lawyers' Professional Indemnity Company be included in Items 1 and 2 of the memorandum. See Appendix "A".

(b) Loss Prevention Booklet - The Director will provide an oral report on the status of the Loss Prevention Booklet at the April 11, 1991 Committee Meeting.

(c) New Professional Liability Policy Wording - The Director will report on the status of the changes to the liability policy wording at the April 11, 1991 Committee Meeting.

(d) Personal Undertakings - A question has been raised with respect to coverage under the Law Society's Professional Liability Insurance Program for claims arising out of personal undertakings. Your Committee is of the view that personal undertakings, insofar as such undertakings involve matters outside of members' control, would not fall within the scope of the insurance program.

ALL OF WHICH is respectfully submitted

DATED this 4th day of March, 1991

"P. Furlong"
Chair

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

- Item 2 - Memorandum from Mr. Lin Whitman to the Insurance Committee dated January 10, 1991 re: Division of responsibility for the Society's Professional Liability Program as between the Committee and staff. (Appendix "A", Pages 1 - 2)

THE REPORT WAS ADOPTED

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TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of March, 1991 at one-thirty in the afternoon, the following members being present: Messrs. Bragagnolo (Chair), Lamont and Hickey.

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

ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director's Monthly Report is attached as Appendix "A".

2. E & O FINANCIAL REPORT

The Monthly Errors and Omissions General Expense Budget Report, for the current budget period is attached as Appendix "B".

3. INSURANCE COMMITTEE MEETING WITH E & O COUNSEL

As an integral part of your Committee's overall focus and endeavors to maintain an accurate overview of the functioning of the Errors and Omissions Program, the Chair is currently scheduling a meeting between Committee members and E & O defence counsel. Your Committee addressed the question of whether or not The Law Society should underwrite the expenses incurred by defence counsel in attending this meeting and concluded that it should not.

4. OUTSTANDING ITEMS

(a) E & O 1991/1992 Budget - The final version of the 1991/1992 Interim Budget was presented to and approved by your Committee.

(b) E & O Loss Prevention Booklet - The Director will provide an oral report on the status of the E & O Loss Prevention Booklet at the April 11, 1991 Committee Meeting.

(c) New Professional Liability Policy Wording - The Director will provide a report on the status of the changes to the liability policy wording at the April 11, 1991 Committee Meeting.

(d) E & O Levy Exemption/Pro Bono Work for Charitable Organizations - Previously, the Committee considered a member's request for a continued exemption from the E & O levy in the event the member accepted a request to provide professional services for a charitable organization on a gratuitous basis. Your Committee concluded that payment of the E & O levy would be required. This was followed by a request that the Society assist in such cases by establishing a program

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that would remove from the individual member the obligation to pay the E & O levy. This could be accomplished by The Law Society paying the levy on behalf of such members. The Deputy Director has been requested to meet with Mr. Andrew Brockett with a view to establishing a proposal in this regard. A detailed report will be presented at the April 11, 1991 Committee Meeting.

ALL OF WHICH is respectfully submitted

DATED this 8th day of March, 1991

"P. Furlong"
Chair

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

- Item 1 - Director's Monthly Report - February 22, 1991.
(Appendix "A", pages 1 - 4)
- Item 2 - Errors and Omissions General Expense Budget for the seven
month period ending January 31, 1991. (prepared February 26,
1991). (Appendix "B")

THE REPORT WAS ADOPTED

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LEGAL EDUCATION COMMITTEE

Mr. Rock presented the Report of the Legal Education Committee of its meeting on March 7th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL EDUCATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of March, 1991. The following members were present: A. Rock (Chair), M. Cullity, D.H.L. Lamont (Vice-Chairs), T. Bastedo, D. Bellamy, C. Campbell, S. Chapnik, R. Ferguson, L. Legge, P. Peters, M. Somerville, S. Thom, R. Yachetti. In attendance representing the law schools was: J. Whyte. In attendance representing the Bar Admission Advisory Committee was: J. Lewis. Staff in attendance were: M. Bode, D. Crosbie, B. Duncan, D. Glatte, H. Harris, M. Hart, C. Keech, J. Light, G. McKenzie, M. McSorley, A. Rookes, A. Treleaven.

A.
POLICY

1. CONSEQUENCE OF FAILING 32ND BAR ADMISSION COURSE

The 32nd Bar Admission Course Examination and Grading Rules include the following provision:

Every student who does not satisfy the requirements is entitled to repeat the teaching term of the Bar Admission Course once. In so doing, the student must satisfy all the requirements of Phases One and Three of the new Bar Admission Course.

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Every student who exercises the entitlement to repeat the teaching term of the Bar Admission Course will have completed the Practice Skills component of the 32nd Bar Admission Course as well as the articling requirement. Accordingly, both for educational and compassionate reasons it is arguably too onerous to require completion of Phase One, which is essentially a skills-oriented program aimed particularly at students in the pre-articling stage of their legal education.

It is recommended that the 32nd Bar Admission Course Examination and Grading Rules be modified to read instead as follows:

Every student who does not satisfy the requirements is entitled to repeat the teaching term of the Bar Admission Course once. In so doing, the student must satisfy all the requirements of Phase Three of the new Bar Admission Course but is exempt from Phase One.

Approved

2. BAR ADMISSION COURSE STUDENT FAILURES

There are 22 students who currently stand failed in the 32nd Bar Admission Course. Those students can be categorized as follows:

- a) 4 students who failed four examinations and consequently are not entitled to write supplemental examinations,
- b) 1 student who has failed one supplemental examination only, in Civil Litigation,
- c) 13 students who have failed one examination only, in Business Law,
- d) 1 student who has failed one examination only, in Residential Real Estate,
- e) 3 students who failed one examination only, in Creditors' and Debtors' Rights,

The 32nd Bar Admission Course Examination and Grading Rules (pages 1 - 2) prescribe the grounds upon which relief, if any, is available for the failed students. Where relief is available, it is limited to permission to write a second supplemental examination. Where relief is denied or is not available, a student is permitted to repeat the entire teaching portion of the Bar Admission Course.

Three of the students in category (a) above notified the Director that they are seeking relief from failure of the Bar Admission Course, even though the Examination and Grading Rules do not permit further examinations, including supplemental examinations, and do not allow for an appeal. Their written material was placed before the Committee at its March 7 meeting.

Students in categories (b) to (e) above continue to notify the Director that they are seeking relief from failure pursuant to the provisions of the Examination and Grading Rules.

It is recommended that the Chair appoint a Subcommittee of three members of the Legal Education Committee to carry out the functions referred to below.

Approved

It is further recommended that the students in category (a) above be required to satisfy all of the requirements of Phase Three (the thirteen week session) of the Bar Admission Course commencing on September 16, 1991.

Approved

It is further recommended that a Subcommittee of three members of the Legal Education Committee consider pursuant to the Examination and Grading Rules any appeals of students in categories (b) to (e), and that the decision of the Subcommittee be final.

Approved

3. ARTICLING REFORM

The Articling Sub-Committee, at its meeting on February 13, considered the criteria set out in the Articling Reform Sub-Committee Report on who can be an Articling Principal. The sections from the Report are attached. (pages 3 - 5)

The following paragraph in the Report was critically reviewed, taking into account the interests of Articling Principals and Students:

In the event that a formal complaint of professional misconduct or conduct unbecoming a barrister and solicitor has been authorized by a chair or vice-chair of the Discipline Committee and is outstanding at the time of the member's application, the application will be deferred until the final disposition of the complaint, whereupon the Articling Sub-Committee will consider the disposition of the complaint, and all other relevant factors in deciding whether the application should be granted.

It is recommended that the word "generally" be inserted following "will" so that the paragraph would read:

In the event that a formal complaint of professional misconduct or conduct unbecoming a barrister and solicitor has been authorized by a chair or vice-chair of the Discipline Committee and is outstanding at the time of the member's application, the application will generally be deferred until the final disposition of the complaint, whereupon the Articling Sub-Committee will consider the disposition of the complaint, and all other relevant factors in deciding whether the application should be granted.

Approved

C.
INFORMATION

1. BAR ADMISSION COURSE FACULTY

Deborah Glatter became the newest member of the Bar Admission Course Faculty on February 1, 1991.

Following her law school graduation from the University of Windsor in 1980 Ms. Glatter articulated with Schwartz, Udell, Shanfield in Windsor. Since her admission to the Ontario Bar in 1982 Ms. Glatter practised law with Schwartz, Udell, Shanfield, with Bresver, Grossman, and most recently with Rodica David. Ms. Glatter's practice background is primarily in the areas of Family Law and Civil Litigation.

2. ARTICLING SUB-COMMITTEE

The Articling Sub-Committee had its second meeting on Wednesday February 13. In attendance were the Chair, Marc Somerville, Denise Bellamy, Janne Burton, Sandra Chapnik and Barbara Dickie. Also in attendance from the Department of Education staff were Alan Treleaven, Marilyn Bode, and Mimi Hart. Marilyn Bode is the new Articling Director. One member remains to be appointed.

The first item of business was a further consideration of marketing the Proposals for Articling Reform.

Gemma Zechinni, the Director of the Law Society's Information Department attended and provided the Sub-Committee with a communications plan, including objectives, target audiences (law students, law school deans, members of the legal profession, legal associations, legal press, main stream media and law school newspapers) and considered strategies to reach the target audiences.

The Sub-Committee then moved on to consider the criteria to be a Principal. Discussion focused mainly on the ethical standards portion of the Proposals for Articling Reform, and the Sub-Committee decided to bring one area of concern to the Legal Education Committee for debate and a decision. (See Policy section of this Agenda.)

The balance of the meeting was devoted to consideration of a draft application form to be a Principal.

3. CONTINUING LEGAL EDUCATION REFORM

The Continuing Legal Education Reform Subcommittee met most recently on Monday, February 11. The following members were in attendance: Sandra Chapnik, Marc Bode, Loretta Merritt and Paul Perell. Staff in attendance were: Brenda Duncan, Cheryl Keech and Alan Treleaven.

The Subcommittee re-drafted the Continuing Legal Education Reform Subcommittee Report. The draft Report was tabled for consideration at the Committee's April meeting.

4. LIST OF CANDIDATES IN THE 32ND BAR ADMISSION COURSE

A copy of the list of names of candidates who have completed the requirements of the 32nd Bar Admission Course, the names of the Transfer candidates who have completed the requirements of the 32nd Bar Admission Course, the names of unsuccessful candidates, and the names of candidates who qualify to win scholarships and prizes was provided to the Committee.

The lists were approved.

5. DEPARTMENT OF EDUCATION 1991-92 BUDGETS

The draft budgets for the 1991-92 Bar Admission Course, Continuing Legal Education and Printing Departments require consideration by the Committee before being referred to the Finance Committee. The draft budgets were tabled for consideration and review by the Committee. The Committee referred the budgets to the Finance Committee.

6. CONTINUING LEGAL EDUCATION REPORT ON COURSES

The Report is attached. (pages 6 - 7)

7. COMPUTER EDUCATION FACILITY REPORT ON COURSES

The Report is attached. (pages 8)

8. LEGAL EDUCATION COMMITTEE AND LAW DEANS ANNUAL MEETING

The Committee of Ontario Law Deans and the Legal Education Committee held their annual meeting at 4:00 p.m. on Thursday, March 7.

Dinner followed, hosted by the Committee of Ontario Law Deans, at 6:00 p.m. The dinner and meeting took place at Flavelle House, Faculty of Law, University of Toronto.

9. DEPARTMENTAL BUDGET REPORT

Pursuant to the direction of the Treasurer, the Director reported on the Department of Education budgets to date.

ALL OF WHICH is respectfully submitted

DATED this 7th day of March, 1991

"A. Rock"
Chair

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

- A-Item 2 - 32nd Bar Admission Course Examination and Grading Rules.
(Pages 1 - 2)
- A-Item 3 - Excerpt from the Articling Reform Sub-Committee Report re:
Who may be an articling principal.
(Pages 3 -5)
- C-Item 6 - Continuing Legal Education: Report on Courses (Toronto
Programs and Video Replay Programs.
(Pages 6 - 7)
- C-Item 7 - Monthly Report on Activities for February, 1991 - Computer
Education Facility. (Page 8)

THE REPORT WAS ADOPTED

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WOMEN IN THE LEGAL PROFESSION COMMITTEE

Ms. Kiteley presented 2 Reports of the Women in the Legal Profession Committee of its meetings on February 8th and March 1st, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Friday, the 8th of February, 1991, at 8:00 a.m., the following members being present: F.P. Kiteley (Chair), T.G. Bastedo, D.E. Bellamy, S.R. Birenbaum, C.L. Campbell, M.J. Mossman, A-M Stewart.

Also present: M.J. Angevine, A.M. Brockett, M. Farrell, T. Hupman, L.M. Johnstone, M. Moliner, H. Sava, R.F. Tinsley, A.D. Treleaven, G. Zecchini.

A.
POLICY

1. SEXUAL HARASSMENT

In 1990, the Policy Section of the Discipline Committee, responding to the report by Fiona Kay, Women in the Legal Profession, suggested that there was a need to study the potential problem of sexual harassment. Your Committee decided to develop a policy statement for

the profession. It became apparent that an important first element would be a statement of the law on the subject. At its meeting on February 8, your Committee considered two documents prepared as the first of a series to be circulated to the profession:

- a. "Sexual Harassment in the Workplace: A Review of the Law in Canada."
- b. "Model Policy Statement Regarding Sexual Harassment in the Workplace."

The "Review of the Law" is being prepared for presentation to Convocation, with a view to its circulation to the profession.

The draft "Model Policy Statement" has been referred to the Human Resources Committee of the Law Society which is considering a personnel policy on sexual harassment.

It has been proposed that the Rules of Professional Conduct should address the issue of sexual harassment. Your Committee will discuss this matter with the Professional Conduct Committee.

Note: amendment, see page

B.

ADMINISTRATION

No matters to report.

C.

INFORMATION

1. FEDERAL-PROVINCIAL-TERRITORIAL WORKING GROUP ON GENDER EQUALITY IN THE CANADIAN JUSTICE SYSTEM

The Attorneys General in Canada have established a Working Group on Gender Equality in the Canadian Justice System. Marie Moliner, Counsel in the Ministry of the Attorney General of Ontario, attended by invitation to report on the activities of the Working Group. Its objective is to develop proposals for the promotion of sexual equality in the justice system.

The following areas are being studied:

- The response of the justice system to violence against women.
- Sex-bias in the courts (with particular reference to the courtroom).
- The response of the justice system to female offenders.
- Access to justice for women.
- Bias against women in substantive law.
- Women working in the justice system.

The Working Group is assembling information on initiatives taken by the law societies in addressing these issues.

28th March, 1991

Your Committee will be kept informed as to the progress of the Working Group and has offered to make available the information and material it has collected in the course of its work.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"F. Kiteley"
Chair

It was moved by Mr. Yachetti that the last paragraph in Item 1 under the Policy section of the February 8th Report be amended to read:

"It is proposed that the Rules of Professional Conduct should address the issue of sexual harassment and if it so decides make rule change recommendations."

The Chair accepted the amendment.

THE REPORT AS AMENDED WAS ADOPTED

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TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Friday, the 1st of March, 1991, at 8:00 a.m., the following members being present: F.P. Kiteley (Chair), T.G. Bastedo, D.E. Bellamy, S.R. Birenbaum, C.L. Campbell, L.K. Ferrier, M.J. Mossman.

Also present: M.J. Angevine, A.M. Brockett, L.M. Johnstone, F.M. Kay, A.D. Treleaven, G. Zecchini.

A.

POLICY

1. SEXUAL HARASSMENT

For some months, your Committee has been considering the problem of sexual harassment in the legal profession. As outlined in the report of the February 8 meeting, it was decided, as a first-step, to develop a statement of the law on the subject.

Attached to this report is a document entitled "Sexual Harassment in the Workplace: A Review of the Law in Canada", dated February 28, 1991.

Convocation is asked to authorize the Committee:

- i. To make minor changes to the document, if necessary; and
- ii. To publicize the document, particularly to members of the Law Society.

B.

ADMINISTRATION

No matters to report.

C.
INFORMATION

1. TRANSITIONS IN THE ONTARIO LEGAL PROFESSION

Your Committee considered the second draft of a report by Fiona Kay, entitled Transitions in the Ontario Legal Profession: A Survey of Lawyers From the Past Fifteen Years of Bar Admissions. Recommendations arising from the report are being prepared by the Committee.

It is planned that the report will be distributed to benchers in time to allow for its consideration at the April meeting of Convocation.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"F. Kiteley"
Chair

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

A-Item 1 - Report entitled "Sexual Harassment in the Workplace: A Review of the Law in Canada". (Pages 1 - 13)

THE REPORT WAS ADOPTED
.....

DISCIPLINE COMMITTEE

Mr. Lamek presented 2 Reports of the Discipline Committee of its meeting on March 7th, 1991.

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

The DISCIPLINE COMMITTEE begs to leave report:

Your committee met on Thursday, the 7th of March, 1991 at one thirty in the afternoon, the following members being present: Mr. Lamek (Chair), Messrs. Carey and Cooper, Ms. Graham, Messrs. Thoman and Topp.

Also in attendance were Mr. Anderson, Ms. Angevine, Messrs. Kerr, MacKenzie, Stephany, Varro and Yakimovich.

B.
ADMINISTRATION

1B. W. Harry Jones: Request for Permission to Employ Him as a Paralegal

Your Committee considered the request of the firm of Jones, Poultney, Rogers, Ponesse for the permission of Convocation to employ Mr. Jones as a paralegal. Mr. Jones is a former member of the British Columbia bar who was disbarred in September, 1990 for creation of false documents in a mortgage transaction.

28th March, 1991

The Committee reviewed correspondence from Gavin MacKenzie, Senior Counsel - Discipline to the Chair of Discipline discussing his recent communication with Mr. Jones and the firm and from Mr. Pirie of the firm to Mr. MacKenzie about Mr. Jones. The material indicated that Mr. Jones would be closely supervised by the firm. The Committee also reviewed the brief prepared by the firm relating to Mr. Jones' disciplinary proceedings before the Law Society of British Columbia. A copy of the materials which were before the Committee are available on request.

The Committee recommends that Convocation approve the firm's request to employ Mr. Jones as a paralegal.

ALL OF WHICH is respectfully submitted

DATED this 8th day of March, 1991

"P. Lamek"
Chair

THE REPORT WAS ADOPTED

.....

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs to leave report:

Your committee met on Thursday the 7th of March, 1991 at one thirty in the afternoon, the following members being present: Mr. Lamek (Chair), Messrs. Carey and Cooper, Ms. Graham, Messrs. Thoman and Topp.

Also in attendance were Mr. Anderson, Ms. Angevine, Messrs. Kerr, MacKenzie, Stephany, Varro and Yakimovich.

A.
POLICY

1A. Designated Parties

Your Committee reviewed a proposal from staff respecting designated parties within law firms.

The Committee was advised that the Society has, in the past, received requests from law firms to supply information to designated parties within the firm about ongoing activities at the Society involving their members. Complaints, E & O claims, Discipline proceedings, Audit-related investigations, the non-payment of fees or levies, and the failure to make the proper filings would be matters of interest to the firms.

The Committee agreed that a voluntary procedure operated subject to certain conditions would prove beneficial to all concerned.

Your Committee therefore recommends that Convocation adopt the proposal which would be implemented on the following basis:

1. The profession shall be advised that the Law Society is prepared, at the request of firms and on a voluntary basis, to establish an internal mechanism whereby designated members of law firms will be notified of the existence of activity in one or more of the Society's various departments regarding one of its members.

2. The main purpose of the programme is to assist firms in managing their affairs.
3. Firms will provide the Society with the name of the designated member and of an alternate so the latter may be contacted in the event the former is the subject of some form of Law Society activity.
4. The designated member will be notified of matters such as complaints, Audit investigations, Discipline matters, E & O claims, non-payment of fees and levies, non-filing of Forms 2/3.
5. "Notification" will consist of the Society advising the designated member of the existence of a complaint, claim, etc., particulars of which have been sent to the member who is the subject of the complaint, etc. The Society will only provide details of the matter to the designated member if the subject member expressly consents.
6. Firms will be required to advise the Society of any changes to their firm's structure that may affect the operation of this procedure.
7. Firms would not be charged any fee for participating in the programme.
8. The procedure will operate on a trial basis for a period of twelve months.

2A. Time of Service for Discipline Committee Reports

Your Committee reviewed a memorandum prepared by Mr. Robert Conway, Discipline Counsel, which suggested that the Committee consider recommending that Convocation issue a policy direction requiring disciplinary panels to deliver written reports within 30 days of the rendering of oral decisions and recommendations as to penalty. Reference was made to subsection 33(12) of the Law Society Act which requires that a copy of the decision and reasons be served upon the member within 30 days of the date of the decision. Mr. Conway opined that the date of the decision likely refers to the earliest date on which the decision was rendered as opposed to the date on which it was reduced to writing.

Although the Committee recognized the importance of the issue, it did not feel that a policy direction with respect thereto was warranted. Rather, the Committee decided that the clerk of the Discipline Committee should routinely remind hearing panels of the provisions of subsection 33(12) of the Act.

In respect of an attendant issue, your Committee decided that the Chair of the Discipline Committee should communicate in writing with members of each of the hearing panels which are seized in matters in process or where decisions have been reserved, to remind them to complete such hearings and render decisions therein before April 30, 1991, given that some members of these panels may be completing their terms as benchers as of April 30, 1991.

B.

ADMINISTRATION

No matters to report

C.
INFORMATION

1C. Compilation of Discipline Decisions

Your Committee reviewed the following item on discipline decisions which was included in an August 8, 1990 memorandum from Sandra Chapnick to the Committee:

I was surprised to discover that there is no compilation of discipline decisions. Surely, on the matter of penalty, consistency is important. Moreover a computer printout would assist panel members and Convocation in reaching a decision. This is particularly important since Benchers and panel members change on a fairly regular basis.

I recall being in Convocation when panel members in one case denigrated a previous decision which was "too lenient" with regard to penalty. In my view, this is counter-productive. At the very least, the panel should have been able to distinguish the prior case by explaining the reasons for the leniency, which should have been apparent. With our new, sophisticated technology, it should not be difficult to provide updated information regarding discipline decisions on fault and on penalty, to panel members and Benchers hearing discipline matters.

The above matter was brought to the attention of Stephen Traviss, Senior Counsel - Professional Conduct, who advised in a letter to the Chair of Discipline dated February 5, 1991, as follows:

The [case] synopses I wrote for the period of 1972 - 1984 are in the process of being updated from 1984 to the present. The two summer students will be working under my direction to complete the update by the end of the summer. The only decisions being synopsized are those that were considered by Convocation.

As you know the Implementation Committee on the Yachetti Report is planning to have all discipline committee panels in the future give written reasons where the case is disposed of in Committee whether or not the complaint against the member is found established.

Your Committee decided that Ms. Chapnick's concerns are being met and that relevant information respecting discipline decisions is in the process of being compiled.

2C. Michael A. Spensieri: Request for Permission to Employ Him as a Law Clerk without Renumeration

At its March 1990, meeting, your Committee considered the request of counsel for the Children's Aid Society of Metropolitan Toronto to employ Mr. Spensieri as a law clerk without remuneration. Convocation permitted Mr. Spensieri to resign on October 26, 1989.

At the request of counsel for the Children's Aid Society, the Committee deferred the matter to allow for further consideration of the application.

On January 24, 1991, the Society received correspondence from Heather L. Yatarynyoch, Senior Counsel/Director of Legal Services with the Children's Aid Society advising as follows:

I noticed in the latest release of the Ontario Reports that Mr. Spensieri has re-applied for admission to the Society.

In light of that intention, and having heard nothing further from Mr. Spensieri with respect to his desire to clerk for the Society, please be advised that I will not be pursuing any application before Convocation in relation to this gentlemen and would ask that you close your file.

28th March, 1991

Given this correspondence, your Committee's further consideration of the application will no longer be necessary.

3C. Authorization of Discipline Charges

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

The following table shows the number of requests made by Discipline, Complaints and Audit staff for the month of February, 1991.

The following table shows the number of requests made by Discipline, Complaints and Audit staff for the month of February 1991.

	<u>Sought</u>	<u>Obtained</u>
Discipline	5	5
Complaints	9	7
Audit	0	0

Total Number of Charges Authorized to Date for 1991

January	11
February	12
Total:	<u>23</u>

ALL OF WHICH is respectfully submitted

DATED this 8th day of March, 1991

"P. Lamek"
Chair

It was moved by Ms. Kiteley but failed for want of a seconder that with regard to Item A-2A there be a rule requiring written decisions from discipline committees within 30 days from the date of the hearing.

THE REPORT WAS ADOPTED

.....

CLINIC FUNDING COMMITTEE

Mr. Campbell presented the Report of the Clinic Funding Committee of its meeting on March 22nd, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of LEGAL AID begs leave to report:

CLINIC FUNDING

28th March, 1991

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

The Director recommends to Convocation that the Report of the Clinic Funding Committee dated March 22nd, 1991 be adopted.

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

ALL OF WHICH is respectfully submitted

Robert L. Holden,
Director,
Legal Aid.

March 22nd, 1991

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

The Clinic Funding Committee met on March 20, 1991. Present were: Colin Campbell, Q.C., Chair, Paul Copeland, Thea Herman, and Jim Frumau.

A. DECISIONS

1. Applications to the Clinic Funding Committee

a. Supplementary legal disbursements

Pursuant to s.6(1)(m) of the Regulation on clinic funding, the Committee has reviewed and approved applications for supplementary legal disbursements from the following clinic:

Hastings & Prince Edward Legal Services - up to \$5,000

B. INFORMATION

Jim Frumau, member of the Clinic Funding Committee, participated in the 10th anniversary celebration of the Keewaytinok Native Legal Services clinic in Moosonee on March 20, 1991, where he presented an award on behalf of the Clinic Funding Committee recognizing the work of the many volunteers who have contributed their time as members of the Board of Directors of the clinic.

ALL OF WHICH is respectfully submitted

"C. Campbell"
Colin Campbell, Q.C.,
Chair,
Clinic Funding Committee.

March 22, 1991

THE REPORT WAS ADOPTED

.....

PROFESSIONAL CONDUCT COMMITTEE

Mr. Somerville presented the Report of the Professional Conduct Committee of its meeting on March 7th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of March, 1991 at three o'clock in the afternoon, the following members being present: Messrs. Somerville (Chair), Thoman (Vice-Chair), Campbell, Carey, Cooper, Cullity, Lamek and Ms. Chapnik.

A.
POLICY

1. ERROR BY OPPOSING PARTY'S COUNSEL
IN FAXED COMMUNICATIONS

A Toronto law firm with an office in Vancouver has asked what position the Law Society of Upper Canada would take on the scenario described in its letter that is set out below: (please note that the Law Society of B.C. has already passed on the matter)

Another law firm recently telecopied to our Vancouver office in error a letter to its client. The matter was a litigious one and the question arose as to what should be done with the letter. Our Vancouver office consulted the Law Society of British Columbia and was advised orally that:

1. if the receiving lawyer has inadvertently read the letter, the receiving lawyer must advise the other lawyer that he is aware of the content of the letter and put him on notice as to how he intends to use the information gained; and
2. if the receiving lawyer has not read the letter, he must return the letter unread.

I should think that the same position would apply to documents or other materials inadvertently telecopied or sent by mail.

I should be obliged if you would inform me what position the Law Society of Upper Canada takes in this situation. The Law Society of British Columbia did not express any view as to whether the inadvertent telecopying or sending to another lawyer a letter that was supposed to go to the client constituted a waiver of privilege. It has been suggested that in returning material which was inadvertently sent to the lawyer we should put the other lawyer on notice that our clients reserve the right at a later date to move for an order confirming that the lawyer has waived privilege with respect to that material and compelling that lawyer to deliver a copy of the material that was inadvertently sent him or telecopied.

The Committee reached the following conclusions:

1. It agreed with the first conclusion of the B.C. Law Society but thinks the word "inadvertently" should be left out of the conclusion.
2. It did not agree with the second conclusion of the B.C. Law Society because the communication in question would almost always be read in whole or in part.

3. The Law Society should not make any determinations as to whether privilege has been waived or not since this is in the jurisdiction of the courts to make a finding in this regard.

The Committee asks Convocation to adopt its conclusions.

Note: Referred back to Committee, see page

2. REQUEST FOR ADVICE - SHOULD THE
LAWYER NOTIFY THE OFFICIAL GUARDIAN?

A lawyer has been consulted by a parent of a child injured in an automobile accident. He is disturbed at the comment made to him by the parent. He wonders if he is under a duty to notify the Official Guardian. The facts are set out in his letter.

I was originally consulted by a parent of a child who was injured in an auto accident. The parent had originally tried to settle the case with the insurance adjuster himself. When I became involved, I explained to the parent the requirement that infants claims proceeds are to be administered by the Courts until the child turns 18 years of age.

After giving this advice, the client called me back to say that he proceeded handling the matter on his own because he did not like that provision.

I am quite alarmed about this and have a mind to write to the Official Guardian about it. The parent admitted that he had handled an earlier claim of another child and spent the money for the general family.

I would like to report this matter to the Official Guardian but I am wondering if I would not be in breach of my client's privilege. Your advice would be appreciated.

The Committee's Secretary spoke to Mr. George Glass, Senior Counsel with the office of the Official Guardian. Mr. Glass doubted that any insurer would make a payment directly to a parent knowing that it was for the benefit of a minor. The insurer would most likely pay into court pursuant to s.197 of the Insurance Act for the benefit of the minor. Moreover, the insurer would want a release which a minor simply could not give. Since 1982, Mr. Glass noted, an insurer who is under a legal obligation to pay money to a minor can pay this money to a parent or a guardian having custody of a minor. Such a payment cannot exceed \$2,000. A further payment or payments can be made but the total of all such payments cannot exceed \$5,000.

The Committee was of the opinion that the lawyer would be in breach of the solicitor-client privilege were he to advise the Official Guardian. The Committee noted that there was very little likelihood of insurers making payments directly to parents of minors.

The Committee asks Convocation to adopt its opinion.

Note: Referred back to Committee, see page

3. REQUEST FOR ADVICE - SOLICITOR-CLIENT
PRIVILEGE SURVIVING THE DEATH OF A CLIENT

A practitioner phoned in the following fact scenario to the Law Society:

A few years ago a lawyer defended John Smith who pleaded guilty to a charge of arson. He had burned down his father's house. Defence counsel had a psychiatrist testify on the submission as to sentence. The psychiatrist told the court about the physical abuse the accused had suffered over many years. Defence counsel was told by his client Smith that not only had he been abused but his mother and fellow siblings had been abused and they furnished defence counsel with this evidence. The accused Smith chose not to pursue criminal charges against his father.

Smith has died. He did not leave anything to speak of by way of an estate. No executor or administrator was appointed.

The arson case was something of a cause célèbre in the community.

The local police department is now investigating the father for abusing his wife and his children. The children have told the police that they provided defence counsel with evidence and have stated that this evidence should be in defence counsel's file. Defence counsel is now having the file pulled out of storage in order that he may determine just what is in his file.

Defence counsel is disposed to turn over whatever would be of assistance to the police once he has had an opportunity to review what is in his file. However, he is aware that the solicitor-client privilege survives the death of the client. There is no executor or administrator to waive the privilege.

The reason he would like to hand over whatever helpful material he might find to the police is that he remembers his deceased client as being outraged at the abuse to which he and his siblings and their mother had been put.

In the absence of letters patent or letters of administration where the executor or administrator could waive the privilege, the defence counsel should not open up his file to the police.

Note: "patent" should read "probate"

The Committee suggested that it was always open to the police to subpoena the defence counsel and his file in the event a criminal charge is laid against the father. The defence counsel could move to have the subpoena quashed in that compliance with it could involve a breach of the solicitor-client privilege. It would then be up to the judge hearing the motion to make a determination of the privilege question.

The Committee asks Convocation to adopt its conclusion.

3. REQUEST FOR ADVICE - LAWYERS WHO PRACTISED IN ASSOCIATION - ONE LAWYER IS MOVING TO ANOTHER LOCATION - CAN BOTH LAWYERS USE THE OLD NAME OF THE ASSOCIATION?

(a) Smith and Jones practised law in partnership for 1½ years before they terminated the partnership. After that they continued to practise under the name of Smith and Jones although they were in reality two sole practitioners.

Mr. Smith is now going to open an office in Markham and will no longer be practising out of the Toronto office.

The questions that Smith and Jones have asked are these: Can the Toronto office still operate under the name Smith and Jones? Can the Markham office operate under the name of Smith and Jones? They will continue to refer work to one another but there will not be any sort of physical sharing of office space.

28th March, 1991

The Committee did not believe there would be any harm to the public in either the Toronto or Markham office operating under the name of Smith and Jones.

The Committee asks Convocation to adopt this position.

(b) Another fact situation was discussed. A lawyer is a sole practitioner who has an arrangement with another law firm. He refers work to this firm which in turn refers work to him. The firm to which he refers work operates under the name of Black and Brown (they are two lawyers who practise in partnership). The sole practitioner calls himself Doe and Associates even though there is only one lawyer in his office.

The Committee was of the opinion that the name Doe and Associates was misleading. However, Mr. Doe could show on his letterhead that he was associated with the firm of Black and Brown.

The Committee asks Convocation to adopt this opinion.

B.
ADMINISTRATION

1. BUDGET FOR 1991-1992

The Committee considered its draft budget for the next fiscal year.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"M. Somerville"
Chair

The Chair referred Item 2 under Policy re: Request for advice - should the lawyer notify the Official Guardian?, back to the Committee.

It was moved by Ms. Bellamy, seconded by Mr. Topp that paragraph 2 of Item 1 under Policy include the secretary as the solicitor may not have read the letter.

Not Put

It was moved by Mr. Ferrier, seconded by Ms. Kiteley that Item 1 re: Error by opposing party's counsel in faxed communications, be referred back to Committee for further consideration.

The Chair accepted the motion to refer the matter back to Committee.

THE REPORT WITH THE EXCEPTION OF A-ITEMS 1 AND 2 WAS ADOPTED

.....

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

.....

The Treasurer and Benchers had as their guests for luncheon, The Honourable W. Z. Estey, Dr. William Legget, President of the Ontario Dental Association and Dean J. MacPherson of the Faculty of Law at the University of Toronto.

.....

CONVOCATION RECONVENED AT 2:30 P.M.

.....

PRESENT:

The Treasurer (James M. Spence, Q.C.), Arnup, Bastedo, Bellamy, Callwood, Campbell, Cass, Copeland, Ferguson, Ground, Guthrie, Hall, Hickey, Kiteley, Lamak, McKinnon, Murphy, Manes, O'Connor, Rock, Ruby, Shaffer, Somerville, Thom, Thoman, Topp, Wardlaw, Weaver and Yachetti.

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"IN PUBLIC"

.....

PROFESSIONAL STANDARDS COMMITTEE

Mr. Yachetti presented the Report of the Professional Standards Committee of its meeting of March 7th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of March, 1991 at eleven thirty in the morning the following members being present: Mr. Yachetti (Chair), Mr. Carter, Ms. Chapnik, Mr. Ferguson, Mrs. Legge, and Mr. Manes.

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

C.
INFORMATION

1. SUB-COMMITTEE CIVIL LITIGATION

Messrs. Yachetti, Howie and Manes will meet on April 10th to develop terms of reference.

2. SUB-COMMITTEE FAMILY LAW

A draft copy of the checklist was distributed to Committee members at the meeting. The members will review the checklist with a view to approving it in final form at the April meeting.

3. PRACTICE ADVISORY SERVICE - STATUS REPORT

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

4. SUB-COMMITTEE WILLS AND TRUSTS

The checklist was tabled at the Committee's February meeting at which time Mrs. Weaver expressed some concern about the suitability of the checklist for less complex planning and administrative matters. The Committee recommended that representatives of the County & District Law Presidents' Association be asked to review the checklist.

28th March, 1991

Copies of the checklist were distributed to representatives of the County and District Law Presidents' Association who requested that the Committee defer approval of the checklist as presently drafted until the County and District Associations have had an opportunity to consider it further.

The Committee recommended that further consideration of the checklist be deferred to the June meeting to allow the County and District Law Presidents' to examine the checklist and report back to the Committee with its comments.

5. SUB-COMMITTEE REAL ESTATE LAW

The checklist is in the process of being printed and will be ready for general distribution by the end of March.

6. LINK

Attached as C3 - C34 is a copy of the First Annual Report of the LINK Lawyers' Assistance Programme.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"R. Yachetti"
Chair

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

C-Item 3 - Status Report - Practice Advisory Service (Report to
Professional Standards Committee, Meeting of March 7, 1991.)
(Marked C1 - C2)

C-Item 6 - First Annual Report of the Link Lawyers' Assistance
Programme Sub-Committee to Professional Standards Committee,
Meeting of March 7, 1991. (Marked C3 - C34)

THE REPORT WAS ADOPTED

.....

The Chair remarked on the contribution of Mr. Manes to the establishment of the LINK Lawyers' Assistance Programme.

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LIBRARIES AND REPORTING COMMITTEE

Mr. Topp presented 2 Reports of the Libraries and Reporting Committee of its meetings on March 7th and 27th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of March, 1991 at 9:00 a.m., the following members being present:

R. Bragagnolo (Vice-Chair), M. Cullity and R. Topp. G. Howell and P. Bell also attended.

28th March, 1991

A.
POLICY

NO ITEMS

B.
ADMINISTRATION

1. ONTARIO REPORTS - TIMELY REPORTING OF CASES

At the last meeting on February 7th, 1991, Andrew Marshall, Executive Editor of the Ontario Reports, attended to discuss the timeliness of reporting of cases in the Ontario Reports. As a result of that discussion, Mr. Marshall prepared a set of tables showing average reporting times for cases in recent volumes. Mr. Marshall will attempt to report cases within two months from the date cases are released.

Noted

C.
INFORMATION

1. BOOK LIST

The Great Library will be adding 33 new titles to its book collection for March 1991.

2. FINANCIAL STATEMENT

The Financial Statement for the eight months ending February 28th, 1991 was received.

3. DEPARTMENT BUDGETS

The Treasurer sent a memo to all Chairs of Committees requesting that the staff prepare a monthly financial report to the Committee. The Libraries and Reporting Committee Financial Summary, as of February 28th, 1991, shows that the Great Library book expenditures are higher than the "budget to date" figure by \$17,211. The Chief Librarian reported to the Committee that he has talked to the head of the Great Library's Acquisitions Branch and adjustments are to be made to attempt to be within budget.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"D. Murphy"
Chair

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

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 27th of March, 1991 at 5:00 p.m., the following members being present:

D. Murphy (Chair), G. Henderson, M. Hickey and D. Thoman; Glen Howell and P. Bell also attended.

A.
POLICY

NO ITEMS

B.
ADMINISTRATION

1. THE BUDGETS OF THE 47 COUNTY LAW ASSOCIATIONS FOR 1991

The Chief Librarian reported that he received all of the budgets from the 47 county law associations. The Chief Librarian's report and chart showing all of the figures for the 47 counties were discussed by the Committee.

RECOMMENDATION: Your Committee recommends that the Schedule of Grants for 1991 proposed by the Chief Librarian be approved as revised. The Schedule of Grants is attached. (Pg. B1)

C.
INFORMATION

NO ITEMS

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"D. Murphy"
Chair

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

B-Item 1 - Schedule of Grants to County Libraries 1991. (Marked B1)

THE REPORTS WERE ADOPTED

.....

UNAUTHORIZED PRACTICE COMMITTEE

Mr. Hickey presented the Report of the Unauthorized Practice Committee of its meeting on March 7th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of March, 1991 at 10:30 a.m., the following members were present: Mr. Carter (Chair), Messrs. Hickey, Lawrence, Schaffer. Also in attendance were: Mr. Bell, Ms. Dockrill, Ms. Gerber, Mr. Tinsley and Ms. West.

28th March, 1991

B.
ADMINISTRATION

1. ACCOUNTS

Accounts of counsel and investigators were approved in the total amount of \$13,652.06.

2. INVESTIGATIONS

The Society does not have sufficient evidence in two cases to commence prosecutions. The Committee is asked to authorize a request to the Treasurer for the use of an investigator who will not disclose that he/she is from the Law Society and to authorize the commencement of prosecution when the necessary evidence is obtained.

3. WILLS

An update on the "Autowills" matter was provided relative to the recent meeting attended by Mr. Carter, Ms. West, Ms. Dockrill, Mr. Swayze and Mr. Brazeau on behalf of Bell Canada, Hull, Quebec.

The Chair has authorized a wills expert to be engaged for the purpose of determining whether the "Autowills" offerings constitute unauthorized practice, contrary to s. 50 of the Law Society Act.

As well, the Department received an advertisement regarding "Legal Will Kit" and your Secretary received a package, from MLS Systems, a computer "diskette" and booklet, both entitled "My Legal Assistant Prepare Your own Legal Documents", which purports to provide (via the computer program) "Last Will and Testament, Residential Lease, Domestic Agreement, Living Will, Power of Attorney, Bill of Sale, Promissory Note,...and more!". Your Secretary has retained a wills expert to provide an opinion in this matter. We recommend no action be taken until the expert opinion in Autowills is obtained and then recommend the appropriate action.

4. MONITORING TELEPHONE COMPLAINTS

The Unauthorized Practice Department has been instructed by Mr. Spence to keep records of the telephone complaints.

In order to keep orderly records, as well as time devoted to each telephone call, the Unauthorized Practice Department has devised a form with standard questions designed to elicit relevant information from callers. Your Committee has considered computerizing this information and it will submit anticipated expenditures for the equipment to the Finance Committee.

Approved

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"M. Hickey"
for Chair

THE REPORT WAS ADOPTED

.....

COMMUNICATIONS COMMITTEE

Mr. McKinnon presented the Report of the Communications Committee of its meeting on March 21st, 1991.

28th March, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 21st of March, 1991 at 4:30 p.m., the following members were present: C. McKinnon (Chair), J. Callwood, F. Kiteley, S. Thom and Ms. Starkes and Ms. Zecchini.

A.
POLICY

1. DRAFT MEDIA POLICY

The Communications Committee recommends the adoption of the attached (A-1) media policy and media contacts list. Following the adoption of this policy, it is requested that the Treasurer communicate with all Committee Chairs to urge their cooperation with the matters contained therein.

2. COMMUNICATIONS PLAN

The Communications Committee asks Convocation to adopt the attached Communications Plan (A-2).

Note: Motion, see page

B.
ADMINISTRATION

1. CBC LIFE COURT TELEVISION PROGRAM

The CBC plans to produce a series of programs based on real Small Claims Court cases. The Law Society is asked to contribute funds to this program. The Communications Committee considered the feasibility of the Society's participation in this venture and recommends that Convocation refuse the CBC's request. The programs are high quality, but the Society's current budget restraints make a monetary contribution impossible at this time.

C.
INFORMATION

1. CALL USAGE STATISTICS

The most recent call usage statistics for the Lawyer Referral Service and Dial-A-Law programs are attached (A-3).

2. LRS EXPANSION OF SERVICES

Due to a shortage of LRS lawyers in many small cities throughout Ontario, the Referral Service is allowing members to register for three major categories of law, rather than two.

3. NEWS CANADA ARTICLES

A summary of January's News Canada placements are attached (A-4).

28th March, 1991

4. COMMUNICATIONS BUDGET

The Committee reviewed Communications budget for the next fiscal year and forwarded it to the Finance Committee for approval.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"C. McKinnon"
Chair

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

- A-Item 1 - List of media policy and media contacts.
(Marked A-1, pages 1 - 4)
- A-Item 2 - Corporate Communications Plan.
(Marked A-2, pages 1 - 4)
- C-Item 1 - Recent call usage statistics for the Lawyer Referral Service and Dial-A-Law programs.
(Marked A-3, pages 1 - 3)
- C-Item 3 - Memorandum from Mr. Michael S. Daniher, Advance Planning & Communications Limited from Ms. Gemma Zecchini dated March 13, 1991 re: News Canada Articles.
(Marked A-4, pages 1 - 4)

It was moved by Mr. Topp, seconded by Mr. Hickey that the Report be deferred.

Lost

It was moved by Mr. Ground, seconded by Mr. Guthrie that Committee Chairs refer proposed programs to the Communications staff for advice prior to their being considered by the Committee.

The Chair accepted this motion.

Item 2 of section A re: Communications Plan was approved in principle for further consideration of implementation of policies in light of the discussion in Convocation.

THE REPORT AS AMENDED WAS ADOPTED

.....

LAWYERS' FUND FOR CLIENTS' COMPENSATION COMMITTEE

Mr. Ruby presented the Report of the Lawyers' Fund for Clients' Compensation Committee of its meeting on March 7th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LAWYERS' FUND FOR CLIENTS' COMPENSATION COMMITTEE
(formerly the Compensation Fund Committee) begs leave to report:

Your Committee met on Thursday, the 7th of March, 1991 at 11:45 a.m. the following members being present:

C. Ruby (Chair), H. Strosberg (a Vice-Chair), T. Carey, R. Hall and S. Thom; R. Tinsley, P. Bell, and Mrs. H.A. Werry also attended.

A.
POLICY

1. NATIONAL DEFALCATION FUND

The Secretary reported that the Federation of Law Societies of Canada sent a Report, dated November 19, 1990, from its Inter-Jurisdictional Practice Committee concerning inter alia a National Defalcation Fund for discussion purposes. The National Fund would be made up of \$10-\$20 annual per member assessments. There would be a per lawyer cap of \$1,000,000. There would be exclusions - damages, interest, legal fees or investment losses would not be covered. Financial institutions would be compensated, where appropriate. The National Fund would have a discretion. There would be a refund if the money raised from each Province resulted in a large surplus.

At the January meeting of the Committee a summary of the Inter-Jurisdictional Practice Committee report of the Federation on the National Defalcation Fund was requested. A copy of an excerpt of the Report, a memorandum, containing a summary of the report, from Donald Crosbie Q.C., the Under-Treasurer, to the Committee, together with memos from Heather Werry and Peter Bell, and a letter from Mr. Lerner were before the Committee for consideration.

RECOMMENDATION: It is recommended that this matter be deferred until the next meeting.

B.
ADMINISTRATION

1. FEES PAID TO REFEREES AND COUNSEL FOR CLAIMANTS

At the last meeting the staff were asked to prepare a report for the Committee reviewing the fees paid to Referees appointed by the Society to hear claims and those paid to counsel for claimants that appear on Referee hearings.

RECOMMENDATION: It is recommended that this matter be deferred until the next meeting.

C.
INFORMATION

1. REFEREE'S REPORT AND MEMORANDA OF ASSISTANT SECRETARIES

The Secretary reported that the following Referee's Report and memos of Assistant Secretaries were approved by the Review Sub-Committee and the grants recommended as shown on Schedule A attached.

a.) John Agro, Q.C. - Referee

J. Brian Radigan (Suspended two years April 23rd, 1982)
one claim Nil

Peter B. Bell, Assistant Secretary

b.) Solicitor No. 8 (Pending discipline)
five claims \$ 10,818.16

Heather A. Werry, Assistant Secretary

c.) Bird, D. (Disbarred Sept.27/90)
six claims \$149,111.46

28th March, 1991

d.) Morris, Roger W. (Disbarred May 26/88)
one claim \$23,801.44

2. The total amount of accounts approved by Assistant Secretaries for the month of February 1991 was \$7,443.98.

3. The Financial Summary and the Activity Report for February 1991 are attached. (Pgs. C1 - C3)

4. DEPARTMENT BUDGETS

The Lawyers' Fund financial summary as at February 28th, 1991 shows that all accounts are in balance except outside counsel fees that is \$7,153. over the 1990 - 1991 total budget for counsel fees for the year. This is due to a legal account that is for the Society's counsel on a trial in January, 1991. It is anticipated that this will be made up from other accounts.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"C. Ruby"
Chair

SCHEDULE "A"

GRANTS APPROVED BY THE THE REVIEW COMMITTEE AND BY THE
LAWYERS' FUND FOR CLIENTS' COMPENSATION COMMITTEE,
THURSDAY, MARCH 7TH, 1991

REFEREE AND/OR ASSISTANT SECRETARY	SOLICITOR	NUMBER OF CLAIMANTS	TOTAL
John Agro, Q.C. (Suspended two years Apr. 23/82)	J.B. Radigan	1	Nil
P.B. Bell (Pending Discipline)	Solicitor No. 8	5	\$ 10,818.16
H.A. Werry (Disbarred Sept. 27/90)	D. Bird	6	\$149,111.46
H.A. Werry (Disbarred May 26/88)	R.W. Morris	1	\$ 23,801.44
TOTAL		13	\$183,731.06

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

C-Item 3 - Financial Summary for the period July 1, 1990 to February 28, 1991. (Marked C1 - C3)

THE REPORT WAS ADOPTED

.....

LEGISLATION AND RULES COMMITTEE

Mr. Guthrie presented the Report of the Legislation and Rules Committee of its meeting of March 7th, 1991.

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

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of March, 1991, at 11:15 a.m. the following members being present:

M. Cullity (Chair), H. Guthrie, S. Thom; and A. Stone and P. Bell also attended.

A.
POLICY

1. APPEARANCES BY STUDENT MEMBERS

This matter originally came before the Committee in October 1990 and was deferred for further consideration. The previous draft of Rule 53A has been revised and was to be considered by the Legal Education Committee on meeting day, March 7th, and by the Committee. The revised wording is intended to simplify the previous draft of Rule 53A and not to change the intent of the previous draft rule. The Committee is informed that the new draft is being reviewed by Mr. Justice Trainor.

RECOMMENDATION: It is recommended that this matter be deferred until Mr. Justice Trainor approves of the wording of Rule 53A.

2. AMENDMENT TO THE LAW SOCIETY ACT TO PROVIDE THAT THE NAME OF THE COMPENSATION FUND COMMITTEE BE CHANGED TO LAWYERS' FUND FOR CLIENTS' COMPENSATION

Convocation approved on January 25th, 1991 the recommendation of the Compensation Fund Committee of January 10th, 1991, that the name of the Compensation Fund Committee be changed to Lawyers' Fund for Clients' Compensation. In order to implement the change the following sub-sections of Section 51 of the Law Society Act should be amended.

RECOMMENDATION: It is recommended that:-

1.-(1) Section 51(1) of the Law Society Act, being chapter 233 of the Revised Statutes of Ontario, 1980, be repealed and the following substituted therefor:

(1) The Compensation Fund is continued under the name of "the Lawyers' Fund for Clients' Compensation".

(1a) The Society shall continue to maintain the Lawyers' Fund for Clients' Compensation and shall continue to hold it in trust for the purposes of this section.

(2) Subsection 51(2) of the said Act be amended by striking out "Compensation Fund" in the first line and inserting in lieu thereof "Lawyers' Fund for Clients' Compensation".

(3) Subsection 51(3) of the said Act be amended by striking out "Compensation" in the second line.

(4) Subsection 51(4) of the said Act be amended by striking out "Compensation" in the third line.

(5) Subsection 51(5) of the said Act be amended by striking out "Compensation" in the second line.

(6) Subsection 51(6) of the said Act be amended by striking out "Compensation" in the first line.

(7) Subsection 51(12) of the said Act be amended by striking out "Compensation" in the first line.

2. Paragraph 14 of subsection 62(1) of the said Act be amended by striking out "Compensation Fund" in the first line and inserting in lieu thereof "Lawyers' Fund for Clients' Compensation".

B.

ADMINISTRATION

1. AMENDMENTS TO REGULATION 573 TO CHANGE THE WORDS "STATUTORY DECLARATION" IN SUBSECTIONS 16(2) AND (3) TO THE WORD "CERTIFICATE"

It was reported that on January 25th, 1991 Convocation approved the report of the Discipline Committee, (Policy Section), of January 10th, 1991 in which it was recommended that Regulation 573 of the Revised Regulations of Ontario, 1980 be amended by changing the words "statutory declaration" in subsection 16(2) to the word "certificate".

The following wording to amend the Regulations was drafted by counsel for the Law Society.

RECOMMENDATION: It is recommended that:-

1.-(1) Subsection 16 (2) of Regulation 573 of the Revised Regulations of Ontario, 1980, be amended by striking out "statutory declaration" in the third line and inserting in lieu thereof "certificate".

(2) Subsection 16 (3) of the said Regulation 573 be amended by striking out "statutory declaration" in the second line after the clauses and inserting in lieu thereof "certificate".

2. This regulation comes into force on the 30th day of November, 1991.

2. AMENDMENTS TO RULES UNDER THE LAW SOCIETY ACT TO PROVIDE THAT THE NAME OF THE COMPENSATION FUND COMMITTEE BE CHANGED AND THAT THE EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE BE A STANDING COMMITTEE OF THE SOCIETY

(a) Convocation approved on January 25th, 1991, the recommendation of the Compensation Fund Committee of January 10th, 1991 that the name of the Compensation Fund Committee be changed to Lawyers' Fund for Clients' Compensation. In order to implement this change Rules 27, 46B and 50 under the Law Society Act should be amended.

RECOMMENDATION: It is recommended that:-

- (1) Rule 27 be amended by deleting
11. Compensation Fund
and substituting
11. Lawyers' Fund for Clients' Compensation.
- (2) Rule 46B be amended by deleting "Compensation Fund" and inserting in lieu thereof "Lawyers' Fund for Clients' Compensation", and
- (3) Rule 50 be amended by deleting "Compensation Fund" and inserting in lieu thereof "Lawyers' Fund for Clients' Compensation".

(b) Convocation on February 15th, 1991, approved that the Committee on Equity in Legal Education and Practice be a Standing Committee of the Society. In order to implement this change Rules 27 and 46 passed under the Law Society Act should be amended.

RECOMMENDATION: It is recommended that:-

- (1) Rule 27 be amended by adding the following as a Standing Committee of Convocation:
18. Equity in Legal Education and Practice
- (2) and that sub-rule 46I be added:
46I The Equity in Legal Education and Practice Committee is responsible to Convocation for the formulation and implementation of policy on equity in legal education and practice.

3. RULE 2 UNDER THE LAW SOCIETY ACT - THE WORDS AND FIGURES
"INCORPORATED 1822" IN THE SEAL OF THE SOCIETY

The Chair of the Committee undertook to Convocation on January 25th, 1991 that the Committee would look into the question of whether the Seal of the Society as described in Rule 2 should say "incorporated 1822" or whether a different year of incorporation should be indicated. After investigation of this matter it would appear that the Society was created by Statute in 1797. In 1822 the Law Society of Upper Canada was incorporated by a Statute passed by the Legislative Assembly.

RECOMMENDATION: It is recommended that the words, "incorporated 1822", in the Seal of the Society be deleted and that Rule 2 be amended by deleting the words, "and the words and figures incorporated 1822' beneath the column within the exterior circle".

4. AMENDMENTS TO THE RULES CONCERNING FORM 2/3

It was reported that Convocation on January 25th, 1991, approved the report of the meeting of January 10th, 1991 of the Discipline Committee, (Policy Section), in which it was recommended that the Form 2/3 be changed from a Statutory Declaration to a Certificate. The Rules should provide that the Forms 1, 2 and 3 that follow the Rules are the forms as prescribed by the Rules. The following wording to amend the Rules to give effect to these changes, effective with the Form 2/3 to be filed after November 30th, 1991 was drafted by Law Society counsel.

RECOMMENDATION: It is recommended that the Rules under the Law Society Act be amended by adding a new Rule 56:-

- 56(1) The notice of intention to apply for permission to resign referred to in subsection 12(2) of Regulation 573 of the Revised Regulations of Ontario, 1980, shall be in Form 1.

28th March, 1991

- (2) The certificate required to be filed with the Society by a member under subsection 16(2) of the said Regulation 573 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 573 shall be in Form 3.

Attached hereto is the existing Form 1 and the proposed new Form 2/3 in the form of a certificate. (Pgs. B4 - B8)

C.
INFORMATION

1. DEPARTMENT BUDGET

The Treasurer sent a memo to all Chairs of Committees requesting that the staff prepare a monthly financial report to the Committee. The Committee over-spent \$54.16 for sending documents by courier. It is anticipated that this will be made up from other accounts and that no further overages are anticipated.

2. AMENDMENT TO THE LAW SOCIETY ACT RE CLASS PROCEEDINGS

The Attorney-General, Honourable H. Hampton, introduced, in the Legislature on December 17th, 1990, an Act to amend the Law Society Act to provide for Funding to Parties to Class Proceedings. A copy of Bill 29 is attached. (Pgs. C1 - C7)

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"H. Guthrie"
for Chair

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

- B-Item 4 - Form 1 - Notice of Application for Permission to Resign
and Proposed new Form 2/3. (Marked B4 - B8)
- C-Item 2 - Bill 29 - An Act to amend the Law Society Act to provide
Funding to Parties to Class Proceedings. (Marked C1 - C7)

THE REPORT WAS ADOPTED
.....

INVESTMENT COMMITTEE

Mr. Guthrie presented 2 Reports of the Investment Committee of its meetings on February 7th and March 7th, 1991.

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

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of February 1991 at two o'clock in the afternoon, the following members being present: Messrs. Guthrie (Chair), and Howie. Also present: David Carey (Deputy Director of Finance).

28th March, 1991

B.
ADMINISTRATION

1. INVESTMENT REPORT

The Deputy Director of Finance presented to the Committee, an investment report summary for the various Law Society Funds together with supporting documentation for the month ended January 31st, 1991.

Approved

2. INVESTMENT ACTIVITY - ERRORS AND OMISSIONS FUND

<u>Purchase</u>	<u>Broker</u>	<u>Current Market</u>	<u>Yield</u>
\$500,000 10.75% Province of Alberta Bonds due Jan 15/96	T-D Securities	99.80	10.80%
\$500,000 10.75% Province of Alberta Bonds due Jan 15/96	Nesbitt Thomson	99.80	10.80

These investments were made on the advice of Martin, Lucas and Seagram, our independent investment counsellors. The Committee was asked to ratify the purchase of these investments.

Ratified

ALL OF WHICH is respectfully submitted

DATED this 15th day of February 1991

"H. Guthrie"
for Chair

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

B-Item 1 - Investment Report Summary of various Law Society Funds for month of January 31, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of March, 1991 at two o'clock in the afternoon, the following members being present: Mr. Guthrie (Chair). Also present: David Carey (Deputy Director of Finance).

B.
ADMINISTRATION

1. INVESTMENT REPORT

The Deputy Director of Finance presented to the Committee, an investment report summary for the various Law Society Funds together with supporting documentation for the month ended February 28th, 1991.

Approved

2. INVESTMENT ACTIVITY - ERRORS AND OMISSIONS FUND

<u>Purchase</u>	<u>Broker</u>	<u>Current Market</u>	<u>Yield</u>
\$250,000 10.00% Bell Canada Bonds due June 3/96	Burns Fry	98.00	10.49%
\$500,000 10.75% Province of Alberta Bonds due Jan 15/96	Burns Fry	101.25	10.42%
\$415,000 10.75% Province of Bonds due May 1/96	Nesbitt Thomson	100.25	10.68%
\$150,000 10.625% Ontario Hydro Bonds due Feb 19/97	Burns Fry	100.00	10.625%
\$250,000 10.625% Ontario Hydro Bonds due Feb 19/97	Scotia McLeod	100.00	10.625%
\$500,000 10.625% Ontario Hydro Bonds due Feb 19/97	Nesbitt Thomson	100.00	10.625%

These investments were made on the advice of Martin, Lucas and Seagram and with the Chair's approval. The Committee was asked to ratify the purchase of these investments.

Ratified

ALL OF WHICH is respectfully submitted

DATED this 28th day of March 1991

"H. Guthrie"
Chair

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

B-Item 1 - Investment Report Summary, February 28, 1991.

THE REPORTS WERE ADOPTED

.....

RESEARCH AND PLANNING COMMITTEE

Mr. Manes presented the Report of the Research and Planning Committee of its meeting on March 7th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of March, 1991, at 8:00 a.m, the following members being present: H.T. Strosberg (Chair), T.G. Bastedo, D.E. Bellamy, R.C. Bragagnolo, C.L. Campbell, S. Chapnik, L.K. Ferrier, R.D. Manes, V. Prince, R.J. Smith.

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

A.
POLICY

1. VOLUNTARY PRO BONO PILOT PROJECT: PRO BONO LAWYER REFERRAL SERVICE

Your Committee received a report from its Voluntary Pro Bono Subcommittee. The Subcommittee has recommended that a twelve-month pilot project be conducted, under which the legal needs of non-profit organizations in a selected county will be met on a pro bono basis by lawyers within that county. The cost to the Law Society is estimated at \$6,000. The purpose of the project is to determine the feasibility of establishing a formal, province-wide, pro bono delivery system.

A copy of the report, as amended and adopted by the Research and Planning Committee, is attached.

Your Committee makes the following recommendations:

- (a) That the Voluntary Pro Bono Subcommittee be authorized to enter into discussions with the Communications Committee, the County and District Liaison Committee and the County and District Law Presidents Association, with a view to conducting a pilot project for a twelve month period commencing September 1, 1991, or as soon thereafter as possible.
- (b) That the pilot project take the form of a Pro Bono Lawyer Referral Service to be conducted in a county selected in consultation with the County and District Law Presidents Association.
- (c) That the object of the pilot project be to establish a formal pro bono delivery system under which the legal needs of non-profit organizations in the county would be met, on a pro bono basis, by lawyers within the county.
- (d) That inability to afford the cost of legal services should be the major criterion for determining eligibility to use the service.
- (e) That the pilot Pro Bono Lawyer Referral Service be designed in accordance with the recommendations of the Voluntary Pro Bono Needs Assessment Report.
- (f) That an ongoing evaluation process be built into the pilot project and that a full evaluation be undertaken at the conclusion of the twelve months.
- (g) That the Communications Committee be asked to authorize the Law Society Communications Branch to undertake the following services for the pilot Pro Bono Lawyer Referral Service:
 - i. Preparation and mailing of letters inviting lawyers in the selected county to participate.
 - ii. Design, printing and mailing of application forms to lawyers in the county.

- iii. Establishment and day-to-day administration of the project, including handling telephone requests from non-profit organizations and referring the organizations to participating lawyers.
 - iv. Design, printing and mailing of a Pro Bono Lawyer Referral Service card to all eligible non-profit organizations in the county.
 - v. Design, printing and mailing of client satisfaction surveys to be returned by client organizations when legal work completed.
 - vi. Initial press conference launch of Pro Bono Lawyer Referral Service in the selected county.
 - vii. Responding to media inquiries concerning the project.
- (h) That the Communications Committee be asked to include in its 1991-1992 budget the sum of \$6,000 for this project.
- (i) That the County Law Association in the selected county be responsible for:
- i. Encouraging lawyers in the county to participate in the Pro Bono Lawyer Referral Service.
 - ii. Developing, in co-operation with the Voluntary Pro Bono Subcommittee, criteria to be applied in determining the organizations that will be eligible to use the service.
 - iii. Compiling a list of eligible non-profit organizations to whom details of the service should be sent.
 - iv. Authorizing the commencement of the project when sufficient lawyers have agreed to participate and taking steps to ensure that a proper standard of service is maintained throughout the twelve month life of the project.
 - v. Generally making known, within the county, the existence of the Pro Bono Lawyer Referral Service.
- (j) That in carrying out its responsibilities under paragraph (i) above, the County Law Association liaise with the Voluntary Pro Bono Subcommittee and report to the Subcommittee when appropriate.
- (k) That the Voluntary Pro Bono Subcommittee be authorized:
- i. To co-ordinate the pilot project in co-operation with the County Law Association and the Communications Branch of the Law Society.
 - ii. To conduct an evaluation of the pilot project with a view to determining the feasibility of a formal, province-wide, pro bono delivery system.

- iii. To refer the Needs Assessment Report to the Clinic Funding Committee and to discuss, with that Committee, ways of implementing the recommendations respecting the needs of legal clinics.
- iv. To investigate other aspects of a formal pro bono delivery system and to consider the possibility of conducting a pilot project in Metropolitan Toronto.

- (1) That in implementing these recommendations the Voluntary Pro Bono Subcommittee continue to consult with the Research and Planning Committee.

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

1. ORIENTATION FOR NEW BENCHERS

Your Committee considers it important that there be a one-day orientation program for newly-elected benchers. The program could be video-recorded so as to be available for benchers who take office over the course of the next four years. Your Committee will be proposing that a sum of \$5,000 for this purpose be included in the 1991-1992 budget.

2. BENCHERS' RETREAT

In reviewing its budget for 1991-1992, the Committee decided to recommend to the Finance and Administration Committee that funds be allocated for a benchers' retreat.

3. ALTERNATIVE DISPUTE RESOLUTION

At its last meeting, your Committee had a full discussion of the responsibilities of the Law Society in relation to Alternative Dispute Resolution. It has now been decided:

- To ask the Continuing Legal Education Subcommittee of the Legal Education Committee to consider giving greater attention to ADR in its CLE programs.
- To ask the Professional Conduct Committee to consider whether there are aspects of ADR practice that are not adequately addressed in the Rules of Professional Conduct.

4. BUDGETARY PRIORITIES

At recent meetings of Convocation the suggestion has been made that the Research and Planning Committee might consider how the Society should respond to proposals for new programs in a time of fiscal restraint. Your Committee is of the preliminary opinion that this

28th March, 1991

suggestion focuses attention upon the structure through which proposals reach Convocation. It has been argued that budgetary priorities can be determined in a satisfactory manner only where an appropriate structure exists for making decisions. As a first step, your Committee intends to examine the question of whether the existing decision-making structure of the Law Society allows for a satisfactory determination of priorities.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"R. Manes"
for Chair

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

A-Item 1 - Report of the Voluntary Pro Bono Subcommittee.

(Pages 1 - 23)

THE REPORT WAS ADOPTED

.....

FRENCH LANGUAGE SERVICES COMMITTEE

Ms. Bellamy presented 2 Reports of the French Language Services Committee of its meetings on February 7th and March 7th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of February, 1991 at 11:30 a.m. The following members attended the meeting: Bencher representation: Mr. R.C. Topp (Vice-Chair), Mr. J.D. Ground, Ms. P.J. Peters, Mr. B. Shaffer. Staff representation: Mr. D.A. Crosbie, Ms. M.J. Angevine, Mr. A. Treleaven, Ms. H. Harris, Ms. D. Paquet (Secretary). Special representation: Ms. G. Cortis, Legal Aid and Mr. R. Paquette, AJEFO.

A.
POLICY

1. Gender usage and feminization of French texts

The Committee recommends that effective March 1, 1991 the Law Society adopt the University of Ottawa's policy on the feminization of French texts. This policy advocates the use of neutral language, where possible, and the use of both the masculine and the feminine forms where it is not possible to use neutral language. This policy will not apply to translation projects already underway. The French Language Services Office will prepare a statement defining this policy for distribution to Law Society staff using French language services and to in-house and freelance translators working on Law Society documents.

B.

ADMINISTRATION

1. Awareness building programme for Law Society staff

It was proposed and agreed that the French Language Services Office implement a programme to familiarize staff members with the French reality in Ontario and at the Law Society. The programme would present an overview of the francophone community, with a brief review of the French Language Services Act and other related legislation that impact on the Law Society's activities.

2. Distribution of the French Language Services Implementation Plan and Summary Report

It was agreed that the French Language Services Implementation Plan would be distributed in its comprehensive form on a "need to know" basis to key department heads and to government agencies that require it for grant application purposes. It was also agreed that the French Language Services Summary Report will be distributed to key agencies involved in the Law Society's programme such as AJEFO, CBAO and Legal Aid Clinics in designated areas and made available to others on request.

3. Bilingualization of Ontario Reports

Following an analysis of costs, contract provisions and logistics, it was agreed that it was not feasible at this time to bilingualize the Ontario Reports. This decision will be reviewed again in the future.

4. Bilingual Reception - Main switchboard

A bilingual receptionist has just been hired and specific instructions have been given as to the manner in which all incoming calls are to be answered to ensure that French speaking callers are aware that services are available in French.

C.

INFORMATION

1. Tripartite Continuing Legal Education Task Force on French seminars

It was reported that a French language seminar will be held in April, 1991 on commercial law under the joint auspices of the Canadian Bar Association-Ontario, the Association des juristes d'expression française and the Law Society.

2. French Language Skills Upgrading Programme

It was reported that if the budget request for \$10,000 in calendar year 1991 submitted to the Finance and Administration Committee is approved, the in-house French language training classes will begin in early April. Participation in this programme will be determined by the Management Committee.

3. Advertising and public relations campaign

It was reported that the campaign aimed at promoting French language services was put on hold in December pending the review of the Law Society's overall plans with Advance Planning & Communications Limited. In view of limited budgets, the advertising campaign will be replaced by a proposal for a special event on Law Day on April 17, 1991.

4. Budget status

It was reported that the French Language Services Office overspent its Travel budget by \$23.02 in paying for Law Society representation at the PAJLO Committee meeting. This amount will be offset by budget underspending on salaries caused by the delay in hiring a staff translator.

The meeting was adjourned at 12:45 p.m.

ALL OF WHICH is respectfully submitted

DATED this 15th day of February, 1991

"D. Bellamy"
Chair

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of March, 1991 at 11:30 a.m. The following members attended the meeting: Bencher representation: Ms. D.E. Bellamy (Chair), Mr. R.C. Topp (Vice-Chair), Mr. J.D. Ground, Ms. P.J. Peters and Mr. J.D. Thoman. Staff representation: Ms. M.J. Angevine, Mr. A. Treleaven, Ms. H. Harris and Ms. D. Paquet (Secretary). Special representation: Ms. G. Cortis, Legal Aid and Mr. R. Paquette, AJEFO.

A.
POLICY

1. French Language Skills Upgrading Programme

It was agreed that the policy regarding staff participation in the French Language Skills Upgrading Programme for bilingual staff be maintained. Priority will be given to support staff in designated bilingual positions - or as determined by department heads - and the programme will start, as planned, on April 2, 1991. Senior management will be included in the programme subject to availability.

B.
ADMINISTRATION

1. Budget proposal - Fiscal year 1991-92

The budget was approved. The \$33,000 budget increase arises out of the full-year costs of a staff translator who will be joining the Law Society on April 2, 1991.

28th March, 1991

C.
INFORMATION

1. Continuing Legal Education

It was reported that a few registrations have so far been received for the Commercial Law seminar which is to be held in Ottawa on April 19, 1991 under the auspices of the Canadian Bar Association - Ontario (CBAO), the Association des juristes d'expression française (AJEFO) and the Law Society.

Concern was expressed on the timeliness of promotional activities for the April programme. In weighing the effectiveness and cost of a mass mailing vs. a series of advertisements, it was agreed that a one-time advertisement in the Law Times would be more appropriate at this late stage. The AJEFO representative suggested that one-on-one communications with Eastern Ontario members would also be effective and offered his association's assistance in this regard. It was also suggested that other options be reviewed with the CBAO representative and the Law Society Continuing Legal Education office in Toronto and the Communications Department.

2. Cooperation with the Québec Bar Association

The Chair indicated that in recent discussions with Québec Bar representatives she agreed to a suggestion that an exchange of information and greater cooperation between them and the Law Society be encouraged in a number of areas. She suggested that the Law Society follow up on their suggestion in late June 1991, after the newly-elected "Bâtonnier" takes office.

The meeting was adjourned at 12:35 p.m.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"D. Bellamy"
Chair

THE REPORTS WERE ADOPTED
.....

COUNTY & DISTRICT LIAISON COMMITTEE

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

SPECIAL COMMITTEE ON REFORMS IMPLEMENTATION

The Reforms Implementation Report was deferred.
.....

CONVOCATION ADJOURNED AT 4:05 P.M.
.....

Confirmed in Convocation this *28th* day of *April*, 1991.


Treasurer