

MINUTES OF SPECIAL CONVOCATION

Friday, 12th December, 1997
9:20 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Aaron, Adams, Angeles, Armstrong, Backhouse, Banack, Carpenter-Gunn, Carter, R. Cass, Copeland, Crowe, Curtis, DelZotto, Eberts, Feinstein, Finkelstein, Gottlieb, Harvey, Jarvis, Krishna, Lamont, Lawrence, MacKenzie, Manes, Millar, Murphy, Murray, Ortved, Puccini, Ross, Ruby, Sealy, Stomp (conference call), Swaye, Topp, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

Stuart Thom, Q.C., who was elected a bencher in 1966 and served as treasurer from 1974 to 1976 died on December 5th, 1997. Mr. Thom was described by the Treasurer as a "man for all seasons and an inspiration for all generations". Convocation rose for a moment's silence in Mr. Thom's memory.

The Treasurer thanked Ms. Christina Budweth for her work on the toy drive to help raise money for Women's Shelters and encouraged Benchers to contribute to this worthwhile cause.

The Treasurer advised that a new committee to work with the judiciary will be established called the Millennium Committee to plan events for the millennium.

The following members will be given LL.D.s: Susan Elliott, The Honourable Robert Rae, Ian Scott, Q.C. and Paul Lamek, Q.C. The Minister of Justice The Honourable Ann McLellan will be called to the Bar of Ontario.

The Treasurer thanked senior management staff of the Law Society for all their work and assistance over the last year.

Legal Aid Committee Report

Meeting of November 12th, 1997

Mr. Armstrong presented the Report of the Legal Aid Committee for Convocation's approval.

THE ONTARIO LEGAL AID PLAN
RÉGIME D'AIDE JURIDIQUE DE L'ONTARIO

Legal Aid Committee
November 12, 1997

Report to Convocation

Nature of Report: Decision-Making
Information

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Appendix B - OLAP Audited Financial Statements for the year ended March 31, 1997

The Legal Aid Committee met on November 12, 1997. In attendance were:

Committee members: Bob Armstrong (Chair), Neil Finkelstein (Vice Chair), Tamara Stomp, Carole Curtis, Allan Lawrence, Hope Sealy, Marshall Crowe, Gerry Swaye, Abe Feinstein, Rich Wilson, Tom Carey, Elvio DelZotto and Derry Millar.

Senior Management of OLAP: Robert Holden, Provincial Director, and Deputy Directors Ruth Lawson, David Porter and George Biggar, Clinic Funding Manager, Joana Kuras.

Law Society, Government Relations: Sheena Weir. Other OLAP Staff: Elaine Gamble, Communications Coordinator and Felice Mateljan, Executive Assistant.

Attending for the consultation: Professor John McCamus.

The following item is for your approval:

1. Family Law Expansion

In late 1996, the Legal Aid Committee began a series of consultations with the bar and with client groups. As a result of these consultations, the Committee concluded that the family law area had been unfairly affected by cuts, resulting in a 75 per cent drop in the number of family law certificates since 1993. The Committee heard that many lawyers were no longer willing to take family law certificates and clients were having a very difficult time finding a lawyer. Many other potential clients simply stopped applying for legal aid because they believed that there was no longer coverage for family law matters.

12th December, 1997

The Committee worked with the Family Lawyers' Association and client groups to identify ways to improve service to clients and encourage lawyers to accept family certificates. At the March 1997 Legal Aid Committee meeting, the Committee approved several improvements which would allow an extra 5,000 certificates to be issued each year for the next two years. The changes include one additional time authorization in very complex cases, increased discretion (up to 10 per cent) and an extension of services covered to include some priority two issues.

As of April 1, 1997, one additional time authorization has been available in very complex cases. The major issue in each of these cases may receive a second time authorization. For example, in custody cases, the basic allocation of 6.5 hours plus 11.5 hours can be extended, so that an additional 11.5 hours is available for the custody issue. This change allows lawyers to have more time to prepare cases, and provide better service to their clients.

Until April 1, 1997, the Plan had allowed for a maximum of five per cent of the total fee pool to be paid via discretion. The Committee approved a new maximum of 10 per cent of the total fee pool to be paid by way of discretion in family law cases, which will be administered by the Legal Accounts Officer.

Most second priority issues will now be eligible for certificates. These include:

- variations of custody where there is no emergency
- child or spousal support when custody has changed
- enforcement of support if there is merit; initial applications for access to maintain an established parent/child bond
- exclusive possession of property if there are safety or abuse issues
- preservation of property if there is a risk of dissipation (a spouse's business, for example).

These improvements are expected to cost an estimated \$18 million over two years and were budgeted for in the 1997/98 budget. The changes affect all certificates issued after April 1, 1997, as well as any accounts which have not been finalized as of March 31, 1997. If an account has been finalized before March 31, 1997, the account is not eligible for the improvements.

The Plan's Monitor approved these changes in April 1997 and the change was communicated in fact sheets sent to all legal aid offices, over 4,000 lawyers and to shelters, community centres and other points of contact for family law clients. The expansions have since been publicized in the Lawyers' Gazette and the CBAO Family Section Newsletter.

The following matters are reported on for information only:

1. OLAP Financial Reports

The September 1997 Financial Reports are attached.

2. Consultation with Professor John McCamus

Professor McCamus commented on his report and answered questions from Committee Members.

3. Area Committee Appointments

The Committee approved two new appointments to area committees as recommended by the Provincial Director: Jessie Iwasiw in Essex and Donald Wolfe in Niagara North.

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

1. OLAP Financial Reports - September
2. OLAP's Audited Financial Statements for the year ended March 31, 1997
3. copy of Enhancements to Family Law Services as of April 1, 1997.

Item: Enhancements to Family Law Services as of April 1st, 1997

It was moved by Mr. Armstrong, seconded by Mr. Finkelstein that the Enhancements to the Family Law Services be approved and that \$17.5 million be allocated to fund the services.

Carried

There were discussions concerning the Legal Aid budget.

It was moved by Mr. Topp, seconded by Ms. Puccini that the \$25 application fee be deleted today.

Withdrawn

Mr. Topp brought a Notice of Motion to be put before the January 1998 Convocation that the \$25 application fee be deleted.

THE REPORT WAS ADOPTED

Professional Regulation Committee Report

Meeting of November 13th, 1997

Item: Private Practitioner's Report

Mr. MacKenzie presented the item on the Private Practitioner's new form and amendment to the Rule for Convocation's approval.

Professional Regulation Committee
November 13, 1997

Report to Convocation¹

Purpose of Report: Decision-Making

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on November 13, 1997. In attendance were:

Eleanore Cronk (Chair)

Gavin MacKenzie (Vice-Chairs)
Niels Ortved
Harriet Sachs

Marshall Crowe
Gary Gottlieb
Laura Legge
Hope Sealy

Staff: Lesley Cameron, Jon Fedder, Scott Kerr, Sue McCaffrey,
Felecia Smith, Stephen Traviss, Jim Varro, and Jim
Yakimovich

2. This report contains

- the Committee's proposals for prescription of a new form, the Private Practitioner's Report, incorporating the "self-reporting" model for lawyers' trust accounting information; and
- a policy proposal for complaints review throughout Ontario.

NEW FORM - THE PRIVATE PRACTITIONER'S REPORT

A. BACKGROUND

3. At Convocation on October 27, 1997, the report of the Lawyers Fund for Client Compensation Committee ("the report") was adopted. The report contained:

- a. A substantial increase in the compensation fund levy (a decision on which was made in the Society's budget process for 1998); and
- a. A proposal for amendments to Regulation 708 which would change the manner in which members are required to report on their books and records.

4. Details of the second proposal, for the "self-reporting" model of trust account reports to the Law Society, are contained in an excerpt from the report at Appendix 1.

5. As a result of Convocation's approval of the self-reporting model, amendments to Regulation 708 were made by the Law Society at a special Convocation on November 13, 1997. The Regulation has yet to be proclaimed in force by the government.

B. THE COMMITTEE'S RESPONSIBILITY

6. Convocation's approval of the self-reporting model required the Committee's recommendation for approval or prescription of a new form incorporating the new reporting scheme to ensure that it can take effect as soon as possible in 1998.
7. This essentially involved revisions to the current Private Practitioner Form (PPF) to replace the requirement for the filing the Public Accountant's Report to Lawyer². The new form is designated the Private Practitioner's Report (PPR). A draft of the new form was circulated to benchers in October for comment, and feedback from the benchers has led to some changes in the draft which was reviewed by the Committee.
8. The Committee's responsibility in this respect, as it has been with the other forms, is to review the required changes and, if it so decides, recommend to Convocation that the form be prescribed in accordance with the rules.
9. The proposed PPR (both English and French versions), incorporating amendments made by the Committee, together with explanatory information, is attached at Appendix 2.

The Requirement for a Committee's Proposal to Convocation

10. Section 16 of existing Regulation 708 provides that the certificate and the report are to be "in the form prescribed by the rules". Pursuant to Rule 1, amendments to the rules can be accomplished in only two ways:
 - a. By notice of motion given at the Convocation immediately preceding the Convocation at which the motion to amend the rules is made. (Notice has not been given in this case.)
 - b. By proposal in the report of a committee, followed by a motion in Convocation to adopt the proposal.
11. Appendix 3 contains the provisions of Paragraph 27 of subsection 62(1) of the *Law Society Act*, Section 16 of current Regulation 708, Rule 1 and part of Rule 56 (subrules 56(1) to 56(5)) for reference.
12. Under the rules as currently worded, a committee proposal (effectively a recommendation) is the only way to introduce rule amendments to Convocation if notice of the amendment has not been formally given at the previous Convocation.

²Both the PPF (the certificate of the lawyer respecting his or her practice) and Public Accountant's Report are prescribed through s. 16 of Regulation 708 and are required to be filed annually by members of the Society.

13. However, as the amendments to Regulation 708 will determine the nature of the rule change, and thus the language of a motion for Convocation to amend the rule, at present the extent of the Committee's recommendation was that the form be prescribed. Once the Regulation as amended is in place, the appropriate motion can then be brought before Convocation for the rule change to incorporate the prescription.³ The rule amendment will involve the deletion of the requirements for the current Private Practitioner Form and the Public Accountant's Report to Lawyer.

C. DISCUSSION AND RECOMMENDATION

14. The Committee reviewed the design and content of the new PPR and, subject to one amendment, and a recommendation related to the form's use, approved its form and content.

The Amendment

15. The amendment made by the Committee, reflected in the proposed form at Appendix 2, was to include the phrase, "to the best of my knowledge, information and belief" in the certificate by the lawyer at the end of the form, in paragraph (c) (at page 42 of this report) after the word "and" in the second line.
16. In the Committee's view, this allows the lawyer filing the form, in expressly adopting the information contained therein where another person has assisted the lawyer in completing or has completed the financial reporting section of the form, a measure of protection where reliance is based on that person to facilitate the lawyer's certification.

The Related Recommendation

17. An issue arose in the Committee's discussion on the requirement in the form to identify whether a person other than the lawyer filing the form completed the financial reporting information requested in the form, and the status of that person (reference is to page 36 in Appendix 2 of this report).
18. The concern was that a lawyer not engaging an accountant to complete this information may become the subject of a focused audit, on the assumption that the integrity of the financial reporting information would be greater, in the Law Society's eyes, if completed by an accountant. It was suggested that this portion of the form, therefore, be deleted, and included on a separate sheet.
19. The Committee did not agree with the merits of the above argument, nor that that portion of the form should be deleted, for two reasons:
 - a. The profile for focused audits as currently planned did not include this feature;
 - b. Based on the design of the form, the Committee considered the information to be of distinct value in assessing the self-reporting model, and the extent to which the membership in fact engaged accountants to complete the financial information, within the two year "pilot project" timeline.

³This notice of this motion was brought at the November 28, 1997 Convocation, to be acted upon at either the December 12, 1997 or January 23, 1998 Convocation, depending on the status of the amended Regulation.

20. However, the Committee decided that Convocation should:
- clearly state as a matter of policy that the profile to be developed for focused audits would *not* include the fact that a lawyer did not engage an accountant to complete the financial reporting section of the form, and
 - ensure that information to the membership related to the profile for focused audits, specifically state that this is *not* a feature of the profile or a factor to be taken into account.

The Committee's Recommendation on the Form

21. The Committee recommends to Convocation that the Private Practitioner's Report, replacing the Private Practitioner Form and the Public Accountant's Report to Lawyer, be prescribed.
22. The Committee suggests the following motion for Convocation:
MOVED, pursuant to the authority granted by paragraph 27 of subsection 62(1) of the *Law Society Act*:
1. That the English and French language versions of the fiscal 1997 Private Practitioner's Report (as attached to the Secretary's copy of this motion) be prescribed, subject to the change identified in paragraph 2 below.
 2. That the year specified in the title of the Private Practitioner's Report be altered from year to year so as to identify the year in question.

Options and Alternatives for Decision by Convocation

23. Convocation must decide whether:
- a. To approve the new form, on the recommendation of the Committee;
 - b. The language in the above motion reflects the requirement for prescription of the new form.

PROPOSED POLICY ON PROVISION OF
COMPLAINTS REVIEW THROUGHOUT ONTARIO

A. BACKGROUND

24. As a result of discussions between some lay benchers and the Treasurer, an issue respecting the availability of complaints review for complainants outside of Toronto was referred to the Committee for review.
25. Currently, complaints reviews are generally held at Osgoode Hall, although on occasion they have been held in Ottawa and London.
26. The issue is being explored as a means to increase the accessibility of this feature of the complaints process to complainants outside of the Metropolitan Toronto area.
27. Hope Sealy reviewed the subject and submitted her findings to the Committee.⁴

⁴Ms. Sealy's report was also circulated to all lay benchers for comment.

B. THE REVIEW

- 28. The following statistics showing the incidence of complaints reviews held or scheduled in 1996 and to date for 1997 and the number of complaints reviews that have been held outside of Toronto since Convocation's adoption of the recommendation in the Special Report on Complaints Procedures (the Callwood Committee) in 1990:

Complaints Review Hearings for 1996 and 1997

	1996	1997 (Sept.)
Number of Review Days	31	15
Number of Reviews	174	82

Out of Town Complaints Reviews

	1991	1992	1993	1994	1995	1996	1997
Reviews in Ottawa	2	1	1	3	2	-	1
Reviews in London	-	-	-	-	2	-	-

- 29. Of the 256 reviews held in 1996 and 1997, between 50 and 55, or about one-fifth, are for complainants residing outside of the Toronto region (not including about 14 where complainants reside outside of Ontario).⁵ For matters outside of the city of Toronto proper, the number is approximately 106, or about 40% of the total.
- 30. The Callwood Committee's policy, referred to above, stated that "the existing function of Lay Benchers as Complaints Review Commissioners be continued and that Reviews occasionally be held in regional centres."⁶ The rationale at the time was stated to be that "the purpose of occasionally holding Reviews in regional centres is to make this procedure more accessible to complaints throughout the Province".⁷

The Issues

- 31. The following are the key issues considered in this review of an expanded facility for complaints reviews in locations outside of Metro Toronto:

⁵For the purposes of this paper, the Toronto "area" for complaints review would include the area within approximately a 150 kilometre radius of Toronto.

⁶First Report of the Special Committee on Complaints Procedures, February 1990.

⁷*Idem.*

- Which locations outside of Toronto would be appropriate or practical for the reviews?
- Are suitable facilities for the reviews available in those locations?
- Should the current complement of attendees for complaints review be rethought?⁸
- Respecting *pro bono* counsel, while two locations (Ottawa and London) have standing rosters of counsel for the reviews, could there be an increased problem from a conflicts perspective if counsel from a smaller centre attended for the reviews in that location?
- What are the costs associated with the proposal, and what priority should be given to any new financial outlay when assessed against the Society's financial commitments and resources?

A Suggested Approach

32. A pragmatic approach should be taken in addressing this issue.
33. With respect to the locations of centres other than Toronto for complaints review, two criteria should be used to determine them:
 - if Law Society facilities are available or if facilities are available at law schools, reviews should be held in those locations. This would effectively continue the scheduling of reviews in Ottawa and London, given the Bar Admission facilities in those cities;
 - reviews should be held in locations where the lay benchers reside, or in the closest regional centres, as practicalities may dictate. It is recognized that this will change from time to time as the complement of lay benchers changes, and we regard this as a benefit.
34. For locations other than Toronto, as a cost saving measure, the Society need not send a clerk to assist with the review. Any duties that are now done by the clerk in those locations can be done by the lay bencher sitting on the review. Material for the review is always couriered to the lay bencher in advance of the review.
35. Suitable facilities for the review must be arranged in locations other than Toronto, Ottawa and London. This would, for example, exclude lawyers' offices. To the extent that the County and District Law Associations or the law schools may be able to assist in this regard, depending on the location, the Society should pursue those contacts.
36. If reviews are held in smaller centres, the increased potential for conflicts with the individual appearing as *pro bono* counsel to the review must be recognized. A conflicts check must be completed well in advance of each review to ensure that counsel has an opportunity in advance of the review to ensure that no conflict exists, and if one does exist, to allow time to arrange for alternate counsel.
37. Complainants should still be given the option to come to Osgoode Hall for the review, as a matter of their choice. The option for complainants to have the reviews heard in their absence should also be continued.

⁸Currently, a clerk (Law Society employee), the lay bencher, *pro bono* counsel and security personnel attend at the meeting with the complaint(s) and whomever attends therewith.

Cost

38. Last year, funds allocated to complaints review in the Complaints Department's budget amounted to \$4400.00, divided as follows:

Security	\$2400.00
Travel	\$1000.00
Miscellaneous	\$1000.00

39. The 1998 budget is \$4150.00, divided as follows:

Security	\$2400.00
Travel	\$1250.00
Miscellaneous	\$ 500.00

40. The travel component of the budget, given that all lay benchers expenses are paid for by the provincial government, has been used for and is intended to cover staff travel to locations outside Toronto.
41. If the approach suggested above were implemented, with no clerk present at those locations, this portion of the budgeted funds could be allocated to the cost of facilities, if needed. It is also possible that if a conflict with *pro bono* counsel arises which can only be resolved by bringing in "outside" counsel, these funds could be used for any travel or accommodation costs of that counsel.

C. POLICY DISCUSSION

42. The availability of complaints review has been determined by Convocation to be an essential part of the process by which complaints are evaluated and determined. As part of that process, it is an element of the broad governance authority exercised by the Law Society over lawyers in the public interest.
43. The Law Society's Role Statement, specifically the Commentary which discusses the principles of governance in the public interest, states that *The duty to govern in the public interest implies a responsibility to ensure that members of the public may inform themselves as to the manner in which that duty is being discharged...*⁹
44. The openness of the process is inextricably linked to its accessibility.
45. The issue, however, is not whether the Society must ensure that complainants' access to the review option is absolute through the availability of complaints review in all centres in Ontario. It is whether the Society should establish and maintain a policy which will increase and maintain in some measure the availability of reviews outside of Toronto in a meaningful and cost-effective, rational way.
46. There is merit to instituting this policy. It would give greater expression to the Society's dedication to govern in the public interest. In particular, it would indicate that a reasonable accommodation of complainants' interests is being made in this phase of the investigatory process.

⁹Role Statement and Commentary, ¶ 2.6.

Request for Convocation's Review and Decision

47. As the Committee did not have an opportunity to review this matter prior to this Convocation, the Chair of the Committee is referring it to Convocation for its review, at first instance, and a decision on the policy proposal.

Options for Discussion and Decision By Convocation

48. Convocation should determine whether:
- a. the suggested approach adequately addresses the concern about a lack of policy in this area of the process;
 - b. the approach is systematic enough;
 - c. there are any other criteria or considerations which require review.

APPENDIX 1

EXCERPT FROM LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE REPORT TO OCTOBER 9, 1997 CONVOCATION

APPENDIX 2

PROPOSED PRIVATE PRACTITIONER'S REPORT
(in English and French)
AND
EXPLANATORY INFORMATION

APPENDIX 3

EXTRACTS FROM THE *LAW SOCIETY ACT*, REGULATIONS AND RULES

EXTRACTS FROM THE *LAW SOCIETY ACT*

RULES

- 62.—(1) Subject to section 63, Convocation may make rules relating to the affairs of the Society and, without limiting the generality of the foregoing,
27. prescribing forms and providing for their use, except the form of summons referred to in subsection 33 (10).

EXTRACTS FROM REGULATION 708

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

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

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

(a) shall have full access, without restriction, to the files maintained by the member under section 15.2;

(b) shall be entitled to confirm independently the particulars of any transaction in the files; and

(c) shall protect any privilege attaching to the documents in the files.

(3) Subsections (1) and (2) do not apply to a member,

(a) who has not engaged in the private practice of law in Ontario since last filing under this section;

(b) who has practised exclusively as an employee of a government agency, corporation or other non-member of the Society since last filing under this section; or

(c) who has practised exclusively as an employee of a sole practitioner or of a firm and who has not practised on his or her own account apart from such employment since last filing under this section,

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

EXTRACTS FROM THE RULES

PROCEDURES AS TO RULES

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

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

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FORMS

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

(2) The certificate required to be filed with the Society by a member who meets the requirements of clauses (a) and (b) subsection 16(3) of the said Regulation 708 shall be included in the Membership Information Form appended to these rules.

(2.1) The certificate required to be filed with the Society by a member who meets the requirements of clause (c) of subsection 16(3) of the said Regulation 708 shall be included in the Private Practitioner Form which is appended to these rules.

12th December, 1997

- (2.2) The certificate required to be filed with the Society by a member under subsection 16(2) of the said Regulation 708 shall be included in the Private Practitioner Form which is appended to these rules.
- (3) The report of a public accountant that is required to be filed with the Society by a member under subsection 16(2) of the said Regulation 708 shall be the Public Accountant's Report to Lawyer which is appended to these rules.
- (4) The investment authority required to be maintained by a member under paragraph 15.2(1)(a) of the said Regulation 708 shall be in Form 4.
- (5) The report on investment required to be maintained by a member under paragraph 15.2(1)(b) of the said Regulation 708 shall be in Form 5.
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It was moved by Mr. Topp, seconded by Mr. Gottlieb that the need for reporting who assisted in the preparation of the Report as set out in (B) on page 36 be deleted.

Lost

It was moved by Mr. Gottlieb, seconded by Mr. MacKenzie that the policy articulated in paragraph 20 on page 5 of the Report be specifically adopted by Convocation.

"20.

- clearly state as a matter of policy that the profile to be developed for focused audits would not include the fact that a lawyer did not engage an accountant to complete the financial reporting section of the form, and
- ensure that information to the membership related to the profile for focused audits, specifically state that this is not a feature of the profile or a factor to be taken into account."

Carried

It was moved by Mr. MacKenzie, seconded by Mr. Ortved that the motion set out on page 6, paragraph 22 of the Report be adopted subject to the change that the year specified in the title of the Private Practitioner's Report be altered from year to year so as to identify the year in question.

Carried

It was moved by Mr. MacKenzie, seconded by Mr. Ortved that on the day on which the amended version of section 16 of Regulation 708 (which was made by Convocation on November 13, 1997) comes into force, the English and French versions of Rule 56 of the Rules made under subsection 62(1) of the Law Society Act be amended as set out at Tab 6.

Carried

Item: Complaints Review throughout Ontario

Ms. Sealy presented the item in the Report dealing with Complaints Review for complainants outside of Toronto.

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the balance of the Report be adopted.

Carried

MOTION - Amendment of Rules made under Subsection 62(1) of the Law Society Act

It was moved by Mr. Murray, seconded by Ms. Sealy that the English and French Versions of Rule 50 of the Rules (Professional Liability Levies) made under subsection 62(1) of the Law Society Act be amended as set out in Tab 5.

Carried

Appointment of Auditor

Mr. Krishna reported on the selection process for the appointment of an auditor for the Law Society. The recommendation was that the firm of Arthur Anderson & Co. be appointed for the fiscal year ended December 31st, 1997.

A discussion followed.

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It was moved by Mr. Krishna, seconded by Mr. DelZotto that the firm of Arthur Anderson & Co. be appointed as the Law Society's Auditor for the fiscal year ended December 31st, 1997.

Carried

Convocation took a brief recess at 10:45 a.m. and resumed at 11:00 a.m.

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Treasurer's Report on Policy Priorities

The Treasurer presented his Report on policy priorities for discussion.

Treasurer's Report on Policy Priorities
December 12, 1997

Report to Convocation

At the Special Convocation on December 12, 1997 benchers will discuss policy priorities. It is thus important that every bencher come prepared to express, at least in a preliminary way, his or her opinions relating to policy priorities.

Although Convocation will set the priorities, I thought it important to list the policy issues that I would like Convocation to decide in 1998. My "wish list" follows.

1. LEGISLATIVE PACKAGE

The Law Society Act has not been substantially amended for at least 25 years. The Society should do whatever is necessary to see to the passage of the legislative package before June 30, 1998.

2. TECHNOLOGY

Convocation should adopt a preliminary technology policy by February 1998 and a finalized technology policy by June 30, 1998. Among other issues, Convocation must decide whether the Society should involve itself in developing a communications plan, whether it should make a substantial investment in automation and training of the profession, whether it should create a network which will bring together information and services for lawyers and whether it should create a secure intranet for lawyers. Convocation must also soon approve the technology and expenditure for Project 200. For your information, I attach an article entitled *Irish online information service targets UK lawyers in pilot test*.

3. BAR ADMISSION REFORM

The Special Committee on Bar Admission reform will report, on a preliminary basis, to the March 1998 Convocation. The final report will be available so that Convocation may decide this policy issue at the June Convocation. Among other issues, Convocation must decide whether the Bar Admission course should be maintained in its current form, whether Phase Three should be substantially altered or even abolished and whether there should only be a challenge examination. Convocation must also decide on how to deal with visible minority, aboriginal and French language students.

12th December, 1997

4. LEGAL AID

The issue of the Society's governance of the Legal Aid Plan and the extent of the Society's involvement with Legal Aid, if any, should be decided by January 31, 1998. This will allow about 14 months to carry out Convocation's policy decisions before the MOU expires on March 31, 1999.

5. MULTI-DISCIPLINARY PARTNERSHIPS

The Special Committee will deliver a preliminary report for March 1998 Convocation and Convocation should decide this policy issue by June 30, 1998.

6. IMPLEMENTATIONS OF EQUITY INITIATIVES

This important initiative should be a priority throughout 1998 and 1999.

7. PARALEGALS

Convocation should decide the policy issues relating to paralegals by December 1999.

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

Copy of article entitled Irish online information service targets lawyers in pilot test.

The following are some additional issues put forth by Benchers:

- (1) Merger - CDLPA/CBA-O
- (2) Law Society fees
- (3) Insurance fees and profits
- (4) Numbers in the Profession
- (5) Professionalism, Reputation and Ethics
- (6) Needs of lawyers as sole practitioners
- (7) Review of the Rules of Professional Conduct
- (8) Cost to Profession of Self-Regulation
- (9) Self represented parties in court system
- (10) Title Plus - advertising - fee guidelines

The Treasurer advised Benchers to write to him with their opinions.

FOR INFORMATION ONLY

Report of the Governance Restructuring Implementation Task Force

Governance Restructuring Implementation Task Force
December 12, 1997

Report to Convocation

Purpose of Report: Information

ANNUAL PLANNING CYCLE

Purpose

1. The annual planning cycle is fundamental to Convocation's governance of the Law Society. Its purpose is to enable Convocation to establish its vision, set its priorities for the upcoming year, and provide instruction to the CEO.
2. This report identifies the policy issues currently approved by Convocation for development. The issues are set out, beginning at page 4.
3. The Task Force suggests that benchers review the current policy issues and be prepared on December 12 to raise any further issues they feel should be on Convocation's agenda for the upcoming year.
4. The Task Force will gather the issues approved by Convocation for consideration, and together with staff, identify the common policies among them, investigate the financial implications of each of them, and provide Convocation with options upon which it may proceed, along with its recommendations where appropriate.

Convocation's Responsibility

5. In June 1996, Convocation unanimously adopted the Report of the Committee on Governance Restructuring entitled, "*Change through Leadership: A Blueprint for Law Society Governance.*" The report detailed why a change of governance structure was required for the Law Society and set out the underlying principles of the Policy Governance model and its key features and benefits.
6. One of the key features of the Policy Governance model is the institution of an annual planning cycle, which is described at page 5 of the Report as follows:

A planning cycle will allow for more pro-activity and less crisis management. The new governance structure emphasizes planning for the future rather than reacting to the past. A significant portion of Convocation's job will be to spend time deliberating what it wants to do and what it wishes to achieve, rather than having its work predetermined by the agendas of others or events that have spiralled out of control. The planning process will precede the annual budget-setting exercise so that staff can be clear on the results the budget is expected to deliver and so that Convocation can ensure that the services and activities that the budget is designed to fund are consistent with the Society's mission and its strategic objectives.

7. The Annual Bencher Planning Cycle is now enshrined in Governance Policy II.I as follows:
 - 1.0 To accomplish its job to govern with a long-term strategic perspective Convocation shall on an annual basis:

- re-examine its Ends policies
- set a 12-month agenda for its deliberations and policy development
- instruct the Chief Executive Officer to prepare an implementation plan to deliver Convocation's strategic plan/agenda.

1.1 These activities shall precede the creation of the budget for the following year.

8. Convocation has not set an agenda for its deliberations and policy development. As a result, the number of projects and issues being developed, both within and outside of committees, has proliferated. Convocation has, within the past year, approved of more than 50 issues for study.
9. Although Convocation has approved issues lists for each of the committees, and the committees have assigned priorities to their issues, Convocation has not assigned any overall priority to issues. The result is that committees are setting the priorities, and thereby setting the agenda for Convocation, which is not what was contemplated by Policy Governance.
10. Furthermore, without an annual agenda or priorities, the budget drives the programs, rather than being driven by the programs.
11. The Law Society does not have the resources - human or financial - to develop and/or implement policy with respect to 50 different matters. Until Convocation sets its priorities, the CEO is left to merely guess about where the limited resources ought to be allocated.

CEO's Responsibility

12. Once Convocation sets its priorities for the coming year, the CEO is responsible for ensuring that the policy development process that Convocation mandated in June 1996 is set in motion.
13. The first step in that process is the development of a policy proposal for presentation to Convocation. The proposal will include a range of options for Convocation's consideration. Once Convocation approves a particular option, the CEO must then formulate an implementation plan and evaluation mechanisms.
14. The CEO bears sole responsibility for implementing the policies. Convocation may only limit the discretion the CEO has in implementing policy by imposing executive limitations.

Issues

15. What follows is a current list of issues for development approved by Convocation. They are grouped according to the body (Committee or Convocation) from which they emanated, and the priority that has been assigned to them.

CONVOCATION

- 1) Demographic study
- 2) Multi-Disciplinary Practices
- 3) Bencher Pay
- 4) Referendum on Bencher Pay

ADMISSIONS AND EQUITY COMMITTEE

High Priority Issues

- 5) Design and implementation of requalification policy
- 6) Evaluation and policy development concerning the articling phase of the Bar Admission Course
- 7) Implementation of the 16 recommendations approved in the Bicentennial Equity Report
- 8) Task Force on Performance of Aboriginal and Visible Minority Students on Bar Admission Course Examinations
- 9) Bar Admission Course Review
- 10) Review of the French Language Bar Admission Course
- 11) Review of Membership Fees and Categories

Medium Priority Issues

- 12) Membership Issues - rule 50; suspended members seeking reinstatement
- 13) Implication of the reduction of the Law Foundation grant to the Bar Admission Course
- 14) Status of Bar Admission Course Students to appear as agents

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

High Priority Issues

- 15) County Libraries - Long-term planning
- 16) Civil Justice Reform- Mandatory Mediation
- 17) Design and implementation of requalification policy
- 18) Post-call education and enhanced continuing legal education
- 19) Review of Specialist Certification Program
- 20) Competence Education Proposal

Medium Priority Issues

- 21) Civil Justice Reform - other than mandatory mediation
- 22) Monitoring of members who are subject of frequent complaints and LPIC claims
- 23) Liaison with LPIC on issues relating to competence, professional standards, quality assurance and post-call education

Low Priority Issues

- 24) Development of Standards for Lawyers in Lawyer Referral Service
- 25) Quality assurance programs and ISO 9000 for the profession

PROFESSIONAL REGULATION COMMITTEE

High Priority Issues

- 26) Review of mediation rule (Rule 25) and the role of mediation in the Law Society's regulatory process
- 27) Policy issues arising from the redesign of the Law Society's regulatory departments through Project 200
- 28) Review of issues surrounding invitations to attend
- 29) Development of a disclosure policy for discipline hearings
- 30) Review of issues surrounding disciplinary action for failure to comply with LPIC requirements
- 31) Review of rule 13 reporting requirement in relation to the Ontario Bar Assistance Program
- 32) Review of conflict of interest rules

- 33) Development of policy respecting lawyers' sexual relationships with clients
- 34) Review of Law Society's authority to apply for judicial review of itself

Medium Priority Issues

- 35) Review of the length of time members' discipline records should exist
- 36) Development of standards for authorizing sexual harassment complaints
- 37) Development of guidelines for use of in camera material filed at discipline hearings
- 38) Review of issues surrounding investigations of complaints under rules 27 and 28
- 39) Review of the use of restitution in the discipline process
- 40) Review of the processes concerning the delivery of reprimands in the discipline process
- 41) Guidelines for *pro bono* duty counsel at Convocation
- 42) Review of rule 13 (solicitors' financial obligations)
- 43) Revision of rules 7 and 23 (borrowing from clients and role of lawyers in mortgage transactions)
- 44) Issues related to the revised rules of discipline hearings
 - a) whether mediation should be included
 - b) issue of when Convocation is seized of a matter
 - c) review of policy of Convocation's deference to decisions of discipline panels

Low Priority Issues

- 45) Investigation of the use of conditional authorizations when a member has failed to pay a debt
- 46) Review of issues surrounding rule 20 (employment of disbarred and suspended lawyers)
- 47) Development of guidelines for sentencing at discipline hearings and the commencement date for suspensions
- 48) Review of whether staff can authorize payments from the Compensation Fund

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IN CAMERA

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IN CAMERA Content Has Been Removed

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IN PUBLIC

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SUSPENSIONS

It was moved by Mr. Krishna, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid the Errors and Omissions Insurance Levy, and whose name appears on the attached list, be suspended from December 15, 1997 and until their levy is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

NOTICE OF MOTION

The following Notice of Motion moved by Mr. Ruby, seconded by Mr. Copeland will be before Convocation in January 1998:

"THAT Legal Aid be instructed in future that counsel on behalf of the Plan not attend to make submissions to the court in Ontario on Rowbotham applications."

CONVOCATION ROSE AT 1:00 P.M.

Confirmed in Convocation this *23* day of *January* 1998.

Harvey T. Sturkey
Treasurer