

MINUTES OF CONVOCATION

Friday, 23rd April, 1993  
9:00 a.m.

PRESENT:

The Treasurer (Allan M. Rock), Arnup, Bellamy, Bragagnolo, Brennan, Campbell, R. Cass, Copeland, Cullity, Elliott, Epstein, Farquharson, Feinstein, Goudge, Hickey, Howie, Howland, Kiteley, Krishna, Lamek, Lamont, Lawrence, Legge, Levy, McKinnon, Mohideen, Murphy, Murray, D. O'Connor, Palmer, Pepper, Peters, Richardson, Ruby, Scott, Sealy, Somerville, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

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IN PUBLIC

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MOTION

It was moved by Philip Epstein, seconded by Paul Lamek -

THAT Denise Bellamy be appointed a Director of the Federation of Law Societies of Canada.

Carried

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MOTION - COMMITTEE REPORTS TO BE TAKEN AS READ

It was moved by John Arnup, seconded by Ross Murray -

THAT the Reports listed in paragraph 3 of the Agenda be adopted with the exception that Item A-1.(b) of the Legal Aid Report be moved to category 6.

Carried

The following Reports were adopted except for specific items in certain of the Reports noted as requiring separate debate and consideration by Convocation.

- Admissions (2 Reports)
- Communications
- Discipline Policy
- Equity in Legal Education and Practice
- Finance and Administration
- French Language Services
- Insurance
- Investment
- Lawyers Fund for Client Compensation
- Legal Aid
- Legal Education
- Legislation and Rules
- Libraries and Reporting
- March Convocation Minutes
- Professional Conduct
- Professional Standards

Relief and Assistance (in camera)  
Specialist Certification Board  
Unauthorized Practice  
Women in the Legal Profession  
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ADMISSIONS COMMITTEE

Meetings of April 8 and 22, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of April, 1993 at 9.30 a.m., the following members being present: Ms. Mohideen (Chair), Messrs. Brennan, Goudge and Lamont.

Also present: M. Angevine, A. Treleaven, M. Bode, P. Gyulay and C. Shaw

A.  
POLICY

A.1. THREE YEAR RULE - TRANSFER REQUIREMENTS

A.1.2. Your Committee considered what changes, if any, might be proposed to the requirement of three years' active practice experience to be eligible to transfer to Ontario from another Canadian jurisdiction. The following material was available to the Committee to assist in its deliberations:

1. a copy of the decision of the Quebec Superior Court in Richards vs. Barreau du Quebec;
2. a copy of the Pilkington opinion as to the validity of the requirement;
3. a copy of an extract from the Federation of Law Societies of Canada Inter-jurisdictional Practice Implementation Committee Draft Protocol; and
4. a summary of Canadian provincial transfer requirements with respect to the 3 year rule.

Your Committee has instructed the Deputy Secretary to draft a memorandum setting out the issues discussed by the Committee for further consideration at a future committee meeting.

B.  
ADMINISTRATION

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

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

Sheila Joan Beatty  
John Edward Stuart Briggs  
Joseph Dougal Legris  
Debra Joy Poon

Approved

B.2. SPECIAL PETITION TRANSFER UNDER SECTION 4(1)

B.2.1. Andrew G. Kidd (B.Sc. 1982 from the University of Alberta and LL.B. 1985 from the Commonwealth Law School of University College, Cardiff, U.K.) was called to the Bar of the Province of Alberta on the 5th August, 1986 and practised in that province from the 5th August 1986 to the 20th September 1986.

B.2.2. In his affidavit of the 5th April, 1993, Mr. Kidd outlines the nature of the law related work he performed from the end of September 1986 to December 1988 with a real estate development, leasing and consulting company as well as the experience he has gained in Ontario since December 1988.

B.2.3. If he were to formally apply for transfer, Mr. Kidd asks whether his law related work with the Alberta real estate company as well as his experience in Ontario would be taken as the active practice of law for the purposes of meeting the requirement of 3 years of practice.

B.2.4. Mr. Kidd's affidavit was before the Committee for information.

After reviewing the material before it, your Committee concluded that Mr. Kidd's experience does not meet the requirement of three years of active practice within the last five. Accordingly your Committee recommends that Mr. Kidd's petition be denied.

B.2. DIRECT TRANSFER - QUEBEC - SECTION 4(2)

B.2.1. The following candidate has met all the requirements to transfer under section 4(2) of Regulation 708 made under the Law Society Act:

Valerie Teroux

Approved

- B.3. SPECIAL PETITION FOR TRANSFER UNDER SECTION 4(2)
- B.3.1. Jean-Pierre Blais (B.C.L. and LL.B. 1984 both from McGill University) was called to the Bar of the Province of Quebec in November 1985 and practised in that province with the firm of Martineau, Walker from November 1985 to the end of February 1991 [2 yrs & 11 1/2 mos. - within last 5 years at time of enquiry].
- B.3.2. At the end of February 1991 he moved to Australia to pursue a Master of Laws degree at the University of Melbourne. He completed his LL.M. in June of 1992 and expects to have the degree conferred upon him in August this year.
- B.3.3. Since his return to Quebec in August 1992 Mr. Blais states that while he has continued to do some legal research and professional development on his own he has not done any work which would have justified the payment of insurance premiums to the Quebec Bar.
- B.3.4. On the 16th March, 1993, Mr. Blais contacted the Admissions Department of the Law Society regarding the requirements for transfer to Ontario. It was at that time that he realized that the time he had spent in practice, which could be put toward making up the necessary 3 year requirement, was slipping away with each day that passed. At the time that he made his enquiry he was already short the requirement by 2 weeks. On that same day Mr. Blais immediately wrote a letter to the Deputy Secretary outlining the circumstances of his situation and stating his intention to apply for admission at the April 8th, 1993 Admissions Committee meeting.
- B.3.5. Mr. Blais presents a Certificate of Good Standing and requests permission to proceed under section 4(2) of Regulation 708 made under the Law Society Act although short the necessary 3 years of practice by 2 weeks (as of the date of both the enquiry by telephone and letter of intention to apply).
- B.3.6. Mr. Blais' LL.B. degree falls outside the 8 year limit by 9 months. He requests exemption from the common law examination in light of the LL.B. degree being only 9 months outside the 8 year limit; on the basis of both the 5 years and 3 months practice experience gained with Martineau, Walker; and the LL.M. program he has recently completed.
- B.3.7. The petitioner's affidavits of both the 30th March and 2nd April, 1993 were before the Admissions Committee for consideration.

Your Committee recommends that Mr. Blais be permitted to proceed under s. 4(2) of Reg. 708 and that he be granted exemption from the common law examination.

B.4. EXAMINATION RESULTS - COMMON LAW

B.4.1. The results of the Common Law examination held in January, 1993 were before the Committee:

The following candidate passed:

Franck Laveaux

Noted

B.5. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.5.1. BAR ADMISSION COURSE

B.5.2. The following candidate having successfully completed the 33rd Bar Admission Course and having deferred his call to the Bar now has filed the necessary documents and paid the required fee and applies to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on April 23rd, 1993:

Grahame Stewart Russell

Approved

B.5.3. The following candidates having successfully completed the 34th Bar Admission Course and having deferred their call to the Bar now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on April 23rd, 1993:

Ian Johnstone  
Robert Andrew Kelly  
Stewart Robert Shackelton

Approved

B.5.4. The following candidates having successfully completed the 34th Bar Admission Course now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on April 23rd, 1993:

Jacqueline Ann Jones  
Yasothara Sinnadurai

Approved

B.5.5. The following candidates expect to complete the 34th Bar Admission Course by mid-April, 1993, and wish to be called to the Bar and granted a Certificate of Fitness, at Regular Convocation on April 23rd, 1993:

Dianne Myra Corcoran  
Russell Lucien Kaplan

Your Committee recommends that these applications be approved conditional upon the candidates successfully completing the course, filing the necessary documents and paying the required fee prior to April 23rd, 1993.

B.6. PETITION FOR CALL TO BAR - COMPLETED B.A.C. OVER 3 YEARS AGO

B.6.1. Deborah Lynne Sattler successfully completed the 30th Bar Admission Course in February 1989. Ms. Sattler was granted a deferral of her call to the Bar to June of 1990 and later an extension of that deferral to the spring of 1991 to allow her to continue work on a Social Work degree at York University.

B.6.2. Ms. Sattler has not been called to date.

B.6.3. Section 23-(7.1) of Regulation 708 made under the Law Society Act provides:

"Where a person is not called to the bar within three years after completing the bar admission course, the course shall be deemed not to have been completed until the person completes such further experience and studies as Convocation considers are necessary to ensure that person is familiar with current law and practice."

B.6.4. The above provision came into effect in September 1992.

B.6.5. In a petition dated the 25th of March, 1993, Ms. Sattler states that she had been under the impression that she had five years within which to be called before facing the possibility of further examination. In light of this misunderstanding and on the strength of the work she has performed since completing the BAC in 1989, as outlined in her affidavit, she requests a call to the Bar of Ontario, without examination, at Regular Convocation in June this year.

B.6.6. Ms. Sattler's petition was before the Committee for consideration. The Director of Legal Education was of the opinion that, on the basis of the information contained in Ms. Sattler's petition, no further examinations be required.

Your Committee recommends that Ms. Sattler be permitted to be called to the Bar at the June 1993 Regular Convocation, without further examination.



23rd April, 1993

Nancy Jane MacDonald  
Mississauga

Called April 19, 1985  
Died February 25, 1993

Irving Aaron  
Toronto

Called September 18, 1930  
Died March 2, 1993

Noted

C.3.2. (b) Permission to Resign

The following members were permitted to resign their membership in the Society and their names have been removed from the rolls and records of the Society:

Farouq Mallal  
Ottawa

Called April 13, 1983  
Permitted to Resign - Convocation  
March 25, 1993

Noted

C.3.3. (c) Disbarments

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

Mario Giangiooppo  
Downsview

Called April 7, 1982  
Disbarred - Convocation  
March 25, 1993

Noted

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April, 1993

"R. Carter"  
Chair

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 22nd of April, 1993 the following members being present: Messrs. Brennan and Copeland, Ms. Bellamy, and Ms. Elliott.

Also present: M. Angevine

B.  
ADMINISTRATION

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B.1           EXAMINATION RESULTS - STATUTES & PROCEDURE

B.1.2.       The results of the examination on Statutes & Procedure in Ontario held in April, 1993 were before the Committee. Five candidates sat the examination:

B.1.3.       The following candidates passed:

Eric Lloyd Burton  
Flora Pearl Eliadis  
Darcia Ann Colleen Kohuch  
Adrian Alan Phillips

B.1.4       One candidate failed.

Noted

B.2.           CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.2.1.       BAR ADMISSION COURSE

B.2.2.       The following candidates having successfully completed the 34th Bar Admission Course and having deferred their call to the Bar now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on April 23rd, 1993:

Norine Elizabeth den Otter  
Christopher Eric Roine  
John Fitzgerald Silvester  
Graeme John White

Approved

B.3.           TRANSFER FROM ANOTHER PROVINCE - SECTION 4(1)

B.3.1.       The following candidates having successfully completed the Statutes and Procedure in Ontario examination, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted Certificates of Fitness at Regular Convocation on Friday April 23rd, 1993:

23rd April, 1993

Eric Lloyd Burton            Province of Nova Scotia  
Adrian Alan Phillips       Province of Alberta

Approved

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April, 1993

"R. Carter"  
Chair

THE REPORTS WERE ADOPTED

CALL TO THE BAR

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

Randall Norman Rae	33rd Bar Admission Course
Grahame Stewart Russell	33rd Bar Admission Course
Dianne Myra Corcoran	34th Bar Admission Course
Norine Elizabeth den Otter	34th Bar Admission Course
Ian Johnstone	34th Bar Admission Course
Jacqueline Ann Jones	34th Bar Admission Course
Russell Lucien Kaplan	34th Bar Admission Course
Robert Andrew Kelly	34th Bar Admission Course
Christopher Eric Roine	34th Bar Admission Course
John Fitzgerald Silvester	34th Bar Admission Course
Yasothara Sinnadurai	34th Bar Admission Course
Graeme John White	34th Bar Admission Course

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COMMUNICATIONS COMMITTEE

Meeting of April 8, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of April, 1993, the following members being present: Roger Yachetti (Acting Chair), Tom Bastedo, Susan Elliott, Fran Kiteley, Allan Lawrence, Ross Murray, Julaine Palmer, and Stuart Thom. Also in attendance: Carolyn Ateah, Theresa Starkes, Mitchell Temkin and Gemma Zecchini.

A.  

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POLICY

1. Lawyer Referral Service Referral Policy

The Lawyer Referral Service has a long-standing policy of refusing referrals based on sex, race or ethnic background. Originally, the policy decision was based on the Law Society's wish to avoid gender-discrimination against women on the LRS panel. The policy was last re-affirmed by the Committee in May 1991.

Lawyer Referral Service telephone agents often receive requests from members of the public who are seeking referrals to lawyers of a specific gender, race or ethnic background.

The following are examples of the types of referral requests that are being received with increasing frequency:

23rd April, 1993

1. Women callers will often state their preference for female counsel, particularly in family law matters where there has been spousal abuse or abuse of children. These requests are refused citing our gender-neutral policy.
2. Members of ethnic or racial minorities will often ask to be referred to a lawyer in their "community". In cases where there is a language issue, the LRS will endeavour to locate a lawyer who has indicated s/he speaks the language the caller requires. Where the issue is one of race or ethnic background exclusively, these requests are refused citing our ethnic/race-neutral policy. (Note: While the LRS collects data pertaining to lawyers' language capabilities, the LRS does not collect data pertaining to race or ethnic background.)
3. Lawyers on the LRS panel, with whom this subject has been discussed, are of the view that their interests are not well served by having clients referred to them who object to being served by a member of a certain gender, or ethnic/racial background. When this occurs, the client will either not show up for the initial half-hour consultation, or, will not retain the lawyer following the consultation.

The Communications Committee has struck a Sub-Committee to review the current LRS policy and determine whether it properly serves the community and members of the LRS panel. The Sub-Committee has been asked to submit its report to the Communications Committee in June 1993. The following individuals have volunteered to serve on the Sub-Committee: Tom Bastedo and Carolyn Ateah. The Communications Committee also recommends that a member of the Equity Committee serve on this Sub-Committee.

C.  
INFORMATION

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1. Lawyer Referral Service Advertising Campaign

Communications consultant, Mitchell Temkin, from Manifest Communications Inc. presented draft advertisements for the advertising campaign to be launched later on this spring in community newspapers and professional association publications. The Committee reviewed the drafts and directed Mr. Temkin to make certain revisions to the advertisement copy. The Committee was invited to review the drafts over the weekend and provide their comments to the Communications Director. The Committee will be invited to review and approve the final advertisements prior to their placement.

2. Call Statistics

Call statistics from January 1, 1993 to the March 31, 1993 for the Dial-A-Law service indicate 98,849 calls or 1,100 calls per day and the Lawyer Referral Service statistics for the same period totalled 46,582 calls or 727 calls per day.

23rd April, 1993

3. Media Activity

A summary of the media activity for the month of March indicates the following list of popular media issues in order of priority: discipline, lawyers' advertising, lawyers' fees, legal aid, minorities and access to the legal profession, women and access to the legal profession, employment opportunities for Bar Admission graduates, Rule 5, Law Day, Class Proceedings, paralegals, Small Claims Court and other miscellaneous topics.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April, 1993

"D. Bellamy"  
Chair

THE REPORT WAS ADOPTED

FINANCE AND ADMINISTRATION COMMITTEE

Meetings of April 8 and 15, 1993

Mr. Howie presented the Reports of the Finance and Administration Committee including the Budget and recommendation for the annual fees for 1993/94.

Meeting of April 15, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 15th of April, 1993 at four o'clock in the afternoon, the following members being present: K.E. Howie (Chair), J.J. Wardlaw (Vice-Chair), T.G. Bastedo, P.G. Furlong, D.H.L. Lamont, R.D. Manes, D.J. Murphy, P.B.C. Pepper and M.P. Weaver. Also in attendance were D.A. Crosbie, D.E. Crack and D.N. Carey.

B.  
ADMINISTRATION

1. BUDGET AND ANNUAL FEES FOR 1993/94

A memorandum from Mr. Kenneth E. Howie, Q.C. describing the budget and recommendation for the annual fees for 1993/94 is attached.

2. FINANCE AND ADMINISTRATION BUDGET

The budget for the Finance and Administration department which includes the Finance and Accounting, Information Systems, and Human Resources budgets was before the Committee.

Approved

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April, 1993

"K. Howie"  
Chair

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

- B-Item 1 Memorandum from Mr. Kenneth E. Howie, Q.C., Chair, Finance and Administration Committee to the Treasurer and Convocation dated April 19, 1993 re: 1993 Budget/Recommendation for Annual Fees. (Pages 1 - 3)
- B-Item 2 The Law Society of Upper Canada Budget - 1993/94 - Highlights of Departmental Expenditures. (Appendix A, Pages (7))

It was moved by Robert Topp, seconded by Fran Kiteley that the review of the Professional Conduct Rules go ahead in the current budget year.

Carried

ROLL-CALL VOTE

Arnup	For
Bellamy	Against
Bragagnolo	For
Brennan	For
Campbell	For
Copeland	For
Cullity	For
Elliott	Against
Epstein	For
Feinstein	For
Goudge	For
Howie	Against
Kiteley	For
Lamek	For
Lamont	Against
Legge	Against
Levy	For
McKinnon	For
Mohideen	For
Murphy	Against
Murray	For
D. O'Connor	For
Palmer	Against
Peters	For
Richardson	For
Scott	For
Sealy	For

Somerville	For
Strosberg	For
Thom	Against
Topp	For
Wardlaw	Against
Weaver	Against
Yachetti	Against

Meeting of April 8, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, April 8<sup>th</sup>, 1993 at three o'clock in the afternoon, the following members being present: K.E. Howie (Chair), A. Feinstein (Vice Chair), J.J. Wardlaw (Vice Chair), T.G. Bastedo, D.H.L. Lamont, R.D. Manes, D.J. Murphy, R.W. Murray, P.B.C. Pepper and M.P. Weaver. Also in attendance were A.M. Rock, D.A. Crosbie, D.E. Crack, G. Howell and D.N. Carey.

B.  
ADMINISTRATION

1. TREASURER'S HONORARIUM

The Treasurer has asked that the matter of the Treasurer's honorarium be considered by the Finance Committee at its April meeting.

The Treasurer's Honorarium, in the amount of \$50,000, was established in the Society's 1983/84 fiscal year and had it been increased by inflation would be \$69,500. today. It currently stands at \$60,000. Expenses are budgeted at \$25,000.

A survey of the policies of the various Law Societies, made in April 1992, concerning remuneration for the Treasurer (President) was completed as follows:

LAW SOCIETY	TITLE <sup>1</sup>	HONORARIUM		
		IN TOWN	OUT OF TOWN	EXPENSES
Prince Edward Island	President	—	—	\$ 1,000
	Vice President	—	—	—
Newfoundland	President	\$1,000 <sup>2</sup>	—	—
	Honourary Secretary	—	—	—
	Chair Discipline Panel	—	—	—
Nova Scotia	Secretary-Treasurer	—	—	yes
New Brunswick	President	—	—	\$25,000
	Vice President	—	—	—
Quebec	President	\$155,000 <sup>3</sup>	—	\$25,000
	Vice President	\$62,000	—	\$10,000
Manitoba	President	\$10,000	\$15,000	yes
	Vice President	\$ 5,000	\$ 7,500	yes
Saskatchewan	President	\$25,000	—	\$ 5,000
Alberta	President	\$25,000	—	\$ 5,000
British Columbia	Treasurer	\$50,000	—	yes
	Deputy Treasurer	—	—	—
	Assistant Deputy Treasurer	—	—	—

<sup>1</sup> In cases where more than one office is named, the individuals work through the positions year by year, occupying the President/Treasurer chair for one year.

<sup>2</sup> in the form of a gift on leaving office.

<sup>3</sup> Salary similar to superior court judge. If candidate from out of town, allowed an extra \$10,000 for expenses.

The Committee expressed the concern that the amount of the current honorarium may discourage or prevent benchers from smaller practices, especially those outside Toronto, from seeking the office of Treasurer.

It is therefore recommended that the honorarium be increased to \$155,000, which is the current salary of judges of the Ontario Court of Justice.

Note: Motions, see pages 202, 203 and 204

Approved

2. FINANCIAL REPORT

A highlights memorandum for the two Law Society funds for the eight months ended February 28, 1993 was before the meeting. [pages 5 - 9]

Approved

3. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 33 members who have not complied with the requirements respecting annual filing and who have not paid their late filing fee.

In all 33 cases all or part of the late filing fee has been outstanding four months or more. The members owe \$46,320 of which \$16,740 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 33 members be suspended on April 23, 1993 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see page 206

4. SUSPENSION OF MEMBERS - ARREARS OF ANNUAL FEES

There are many members who have not paid the second instalment of the 1992-93 annual fees which were due on the January 1, 1993. Two notices have been sent.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on April 23, 1993 effective on May 1, 1993 if the annual fees remain unpaid on that date.

Approved

Note: Motion, see page 206

5. SUSPENSION OF MEMBERS - ERRORS AND OMISSIONS LEVY

There are many members who have neither paid their Errors and Omissions Insurance Levy nor filed a claim for exemption for the period January 1 to June 30, 1993. Two notices have been sent.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on the April 23, 1993 effective on the May 1, 1993 if the members have not complied with the requirements of the Errors and Omissions Insurance Plan on that date.

Approved

Note: Item deferred

6. 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:

Lewis Edward Hanley	Toronto
Edward John Meredith Huycke	Toronto
* Patrick Stanley FitzGerald	Sault Ste. Marie

\* See also Membership Restored

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

Approved

7. RESIGNATION - REGULATION 12

The following member has applied for permission to resign his membership in the Society and has submitted a Declaration in support. The member has requested that he be relieved of publication in the Ontario Reports.

Robin Edward Elliott of Yellowknife, Northwest Territories was called to the Bar on March 30, 1990. He practised as an associate with the firm McKeon, Poss, Halfnight and Corey until December 1990. He declares that he was not directly responsible for any trust funds or clients' property. All matters that he was handling were re-assigned when he left the firm. All of the books and records relating to the period of practice remain with the firm. In December 1990 he was in-house counsel with the Continental Insurance Company of Canada and was not responsible for any trust funds or clients' property. He states that he is not aware of any claims against him. He is currently practising with the firm of Phillips and Wright in Yellowknife and has no involvement in the practice on law in Ontario. His rights and privileges were suspended on December 1, 1992 for failure to pay his 1992-93 annual fees. Arrears of fees now total \$615.25. His annual filings are up to date. Member asks that application be approved without payment of arrears of fees.

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

Approved

C.  
INFORMATION

1. LAWYERS' FUND FOR CLIENT COMPENSATION - OUTSIDE COUNSEL FEES ACCOUNT

At its February meeting, the Lawyers' Fund for Client Compensation Committee authorized an increase from \$30,000 to \$250,000 in the above account for the 1992/93 fiscal year due to the fact that expenditures on this item were already approximately \$124,000 by the end of January and are expected to continue at a high level into next year. An amount of \$300,000 has been budgeted for this item in the next fiscal year.

Noted

2. ADVOCATES' SOCIETY INSTITUTE REPORT - FEBRUARY 1993

A letter from W.A. Derry Millar, Chair of the Board of Directors of the Advocates' Society Institute, requesting their quarterly payment and summarizing the results and future plans for the Institute was before the meeting.

The Society's budget includes a provision for \$24,000 for funding the Institute for 1993/94.

Noted

3. LEGAL MEETINGS AND ENTERTAINMENT

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

- |                |   |
|----------------|---|
| April 15, 1993 | Law Day<br>Small Dining Room            |
| April 28, 1993 | Medico-Legal Dinner<br>Convocation Hall |

23rd April, 1993

April 30, 1993	Class of '68 Convocation Hall
May 6, 1993	Criminal Lawyers Barristers' Lounge
May 6, 1993	University of Western Ontario Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 23<sup>rd</sup> day of April, 1993

"K. Howie"  
Chair

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

B-Item 1 Memorandum from Mr. David Crack to the Chair and Members of the Finance and Administration dated April 8, 1993 re: February 1993 Financial Statement Highlights.

(Pages 5 - 9)

The following material was distributed to Convocation:

- (1) Dial-A-Law Fact Sheet.
- (2) Letter from Mr. Samuel Lerner to Mr. David Crack dated April 22, 1993 re: Increase in Treasurer's Honorarium.

It was moved by Paul Copeland, seconded by Denise Bellamy that the Treasurer be paid the same salary as a Provincial Court Judge.

Withdrawn

It was moved by David Scott, seconded by Susan Elliott that a committee be struck to study the office of the Treasurer to determine whether the nature of the position had changed to warrant the payment of a salary rather than an honorarium and to make a recommendation as to quantum and that a report be prepared after the next Benchers Election.

An amendment was made by Mr. Howie and accepted by the mover and seconder that the report be brought back as soon as possible.

Carried

ROLL-CALL VOTE

Arnup	For
Bellamy	For
Bragagnolo	For
Brennan	Against
Campbell	For
Copeland	For
Cullity	For
Elliott	For
Epstein	For
Feinstein	For
Goudge	For
Howie	For
Kiteley	For
Lamek	For
Lamont	For
Legge	For
Levy	For
McKinnon	Abstain
Mohideen	For
Murphy	For
Murray	For
D. O'Connor	For
Palmer	For
Peters	For
Richardson	For
Scott	For
Sealy	For
Somerville	For
Strosberg	For
Thom	For
Topp	For
Wardlaw	For
Weaver	For
Yachetti	Against

It was moved by Robert Topp, seconded by Rino Bragagnolo that the honorarium be increased from \$60,000 to \$75,000 to take effect immediately.

Carried

ROLL-CALL VOTE

Arnup	Abstain
Bellamy	For
Bragagnolo	For
Brennan	For
Campbell	For
Copeland	For
Cullity	Against
Elliott	For
Epstein	Against
Feinstein	For
Goudge	Against
Howie	For
Kiteley	Against
Lamek	Abstain
Lamont	Against
Legge	Against
Levy	Against
McKinnon	Abstain
Mohideen	For
Murphy	For
Murray	For
D. O'Connor	For
Palmer	Against
Peters	For
Richardson	Abstain
Scott	Against
Sealy	Against
Somerville	Abstain
Strosberg	For
Thom	For
Topp	For
Wardlaw	Against
Weaver	For
Yachetti	Against

.....

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

.....

CONVOCATION RECONVENED AT 1:45 P.M.

PRESENT:

The Treasurer, Arnup, Bellamy, Bragagnolo, Brennan, Campbell, R. Cass, Copeland, Cullity, Elliott, Epstein, Feinstein, Goudge, Howie, Kiteley, Lamek, Lamont, Lawrence, Legge, Levy, McKinnon, Mohideen, Murphy, Murray, D. O'Connor, Palmer, Peters, Richardson, Ruby, Scott, Sealy, Somerville, Strosberg, Thom, Topp, Weaver and Yachetti.

.....

RESUMPTION OF THE FINANCE AND ADMINISTRATION COMMITTEE REPORTS

Meeting of April 8, 1993

It was moved by James Wardlaw, seconded by Abraham Feinstein that the amount of \$400,000 be budgeted for a cost of living increase and staff salary adjustments.

Carried

ROLL-CALL VOTE

Arnup	Abstain
Bellamy	For
Bragagnolo	Against
Brennan	For
Campbell	For
Copeland	Against
Cullity	Against
Elliott	Against
Epstein	Against
Feinstein	For
Goudge	For
Howie	For
Kiteley	For
Lamek	Against
Lamont	Against
Levy	Abstain
McKinnon	For
Mohideen	For
Murphy	Against
Murray	For
D. O'Connor	For
Palmer	For
Peters	For
Scott	Against
Sealy	For
Somerville	For
Strosberg	For
Thom	For
Topp	Against
Wardlaw	For
Weaver	Against
Yachetti	Against

It was moved by Denise Bellamy, seconded by Julaine Palmer that the increase in the Dial-A-Law line item be re-instated to the amount of \$240,000 and that the Communications Committee undertake to do everything possible to reduce the amount in the 1993/94 budget.

Lost

It was moved by Colin McKinnon, seconded by Hope Sealy that the Communications budget be increased by \$60,000.

Lost

It was moved by Ken Howie, seconded by Abraham Feinstein that the budget as amended be adopted and the fee be set at \$1,132 for the full fee paying member.

Carried

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

It was moved by Ken Howie, seconded by Abraham Feinstein THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from April 23, 1993 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: ARREARS OF ANNUAL FEES

It was moved by Ken Howie, seconded by Abraham Feinstein THAT, having not paid the second instalment of their annual fees for the period July 1, 1992 to June 30, 1993, the rights and privileges of each of the members on the attached list be suspended for a period of one year from May 1, 1993 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)

The Chair asked that Item B-5. re: Suspension of members-Errors and Omissions levy be deferred.

Meeting of April 8, 1993

THE REPORT AS AMENDED AND WITH THE EXCEPTION OF ITEM B-5. WAS ADOPTED

Meeting of April 15, 1993

THE REPORT AS AMENDED WAS ADOPTED

.....

LEGISLATION AND RULES COMMITTEE

Meeting of April 8, 1993

Mr. Cullity spoke to item C.-C.1. re: Regional Election of Benchers and Item C.-C.2. re: Amendment of the Law Society Act to provide that no person be eligible to be Treasurer who has not been elected as bencher in the most recent Bencher Election.

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 8th of April, 1993, at 10:30 a.m., the following members being present: M. Cullity (Chair), the Hon. A. Lawrence, J. Palmer, S. Thom.

Also present: A. Brockett.

A.  
POLICY

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No matters to report

B.  
ADMINISTRATION

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B.1.           RULES MADE UNDER SECTION 62(1) OF THE LAW SOCIETY ACT: AMENDMENT OF NAME OF CERTIFICATION BOARD

B.1.1.           Recommendation

B.1.1.1.       That in paragraph 12 of Rule 27, in the title of Rule 46C and in the first line of Rule 46C, the words "Certification Board" be amended to read "Specialist Certification Board".

B.1.1.2.       That the French Language Services Committee be asked to arrange for a French translation of the amended rule.

B.1.2.           Explanation

B.1.2.1.       On March 26, 1993, Convocation adopted the following recommendation in the report of the Certification Board:

That the Board be hereafter named the "Specialist Certification Board".

B.1.2.2.       The proposed amendment in B.1.1.1 above will change the name of the Board in the three places where it appears in the rules.

C.  
INFORMATION

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C.1.           AMENDMENT OF THE LAW SOCIETY ACT TO PROVIDE FOR THE REGIONAL ELECTION OF BENCHERS

C.1.1.       Your Committee considered proposed amendments to the *Law Society Act*, drafted by the staff, to provide for the scheme of regional elections recommended by the Special Committee on Benchers Elections and adopted by Convocation on March 26, 1993. The proposed amendments will be further considered by your Committee at its May meeting with a view to placing them before Convocation at the earliest opportunity.

C.1.2.       Your Committee understands that the Chair of the Special Committee on Benchers Elections has suggested that the amendments to the *Law Society Act* should be of an enabling nature, empowering Convocation to make rules providing for a scheme of regional elections. Your Committee is proceeding in accordance with this understanding but wishes to draw to the attention of Convocation the fact that, if the details of the scheme of regional representation are prescribed in the rules (as distinct from the act), it will be possible for Convocation to amend the scheme by its own resolution at any time.

C.2. AMENDMENT OF THE LAW SOCIETY ACT TO PROVIDE THAT NO PERSON BE ELIGIBLE TO BE TREASURER WHO HAS NOT BEEN ELECTED AS A BENCHER IN THE MOST RECENT BENCHER ELECTION

C.2.1. On February 26, 1993, Convocation adopted the following resolution:

That no person be eligible to be Treasurer who has not been elected as a bencher in the most recent election.

C.2.2. At present, the only requirement specified in the *Law Society Act* for the office of Treasurer is that the person be a bencher. Section 25 of the act reads:

25. - (1) The benchers shall annually at the regular Convocation in the month of May, or at such other time as the benchers may fix, elect one of their number as Treasurer.

(2) The Treasurer is eligible for re-election.

C.2.3. The current wording appears to permit the election of any bencher (whether elected, appointed or "by virtue of office").

C.2.4. Furthermore, section 14 of the act gives to every member who is elected to the office of Treasurer "all the rights and privileges of an elected bencher."

C.2.5. The resolution adopted by Convocation on February 26, 1993, will therefore require amendment of the act.

C.2.6. Your Committee is proceeding on the following assumptions:

C.2.6.1. - that one of the necessary consequences of the resolution adopted by Convocation on February 26, 1993, would be to disqualify appointed (*i.e.* "lay") benchers from being Treasurer;

C.2.6.2. - that the intention of the resolution of February 26, 1993, was not to disqualify benchers who hold office by virtue of having been elected in Convocation to fill a vacancy.

C.2.7. Your Committee expects to bring forward a recommendation in its May report.

C.3. FRENCH TRANSLATION OF LEGISLATIVE AMENDMENTS

C.3.1. Your Committee has adopted the following procedures in respect of French translation of amendments to the *Law Society Act*, the regulations and the rules.

C.3.1.1. French translation of amendments to the *Law Society Act*

Each proposed amendment will be submitted to Convocation in English, with a recommendation that, if it is approved, it be sent to the Attorney General to be placed before the Legislative Assembly. The recommendation will also propose that the Attorney General be asked to arrange for a French translation to be placed before the Assembly at the same time. When the amendment is published in Bill form, the Legislation and Rules Committee will ask the French Language Services Committee for its comments on the French version.

C.3.1.2. French translation of amendments to the regulations

Each proposed amendment will be submitted to Convocation in English, with a recommendation that, if it is approved, it be sent to the Attorney General to be placed before the Lieutenant Governor in Council. The recommendation will also propose that the Attorney General be asked to arrange for a French translation to be placed before the Council at the same time. When the final text is received from the Attorney General for formal signature by the Treasurer and Secretary (prior to being placed before the Council), the Legislation and Rules Committee will ask the French Language Services Committee for its comments on the French version.

C.3.1.3. French translation of amendments to the rules

Each proposed amendment will be submitted to Convocation in English, with a recommendation that, if it is approved, the French Language Services Committee be asked to arrange for a French translation to be prepared for the Legislation and Rules Committee. Upon being notified by the French Language Services Committee that the French translation is accurate, the Legislation and Rules Committee will submit the French version to Convocation for approval.

C.4. CORRECTION OF MISTAKES IN REGULATION 708

C.4.1. Vol. 126-12 of *The Ontario Gazette* (March 20, 1993) contained corrections of the three minor mistakes in Regulation 708 referred to in the Committee's report of February, 1993.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April, 1993

"M. Cullity"  
Chair

It was moved by Julaine Palmer, seconded by Lloyd Brennan that the Legislation and Rules Committee should draft the Resolution passed at the Annual General Meeting and approved by Convocation to provide that appointed Benchers be eligible for Treasurer.

Lost

THE REPORT WAS ADOPTED

PROFESSIONAL CONDUCT COMMITTEE

Meeting of April 8, 1993

Mr. Somerville spoke to Item A.-2. re: Propriety of a law firm paying an articled student's salary to a consulting company in which the articled student has an interest in or controls.

23rd April, 1993

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 8th of April, 1993 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Cullity (Vice-Chair), Elliott, Goudge, Hickey, McKinnon and Sealy.

A.  
POLICY

1. REQUEST FOR ADVICE - LAWYER IS OWED \$18,000 BY FORMER CLIENT WHO WENT INTO BANKRUPTCY - HE WISHES TO OPPOSE FORMER CLIENT'S APPLICATION FOR DISCHARGE - LAWYER WANTS TO KNOW HOW FAR HE CAN GO IN REVEALING FINANCIAL INFORMATION ABOUT FORMER CLIENT

A lawyer has asked the Committee for advice in the following situation:

I acted for a dentist, Dr. X, in connection with his divorce and family law claims by his wife. My retainer terminated when he went bankrupt owing me at least \$18,000.

Dr. X will be applying for a discharge shortly. The trustee states that debts of \$788,000 have been proved, and there are no assets.

I have a considerable amount of financial material from Dr. X, particularly with respect to his income, which is quite high.

I wish to oppose his discharge on the grounds that, in view of his income, his discharge should be conditional on him making payments to the trustee of the amount secured.

I anticipate he will give evidence, and I might wish to also.

Is it proper for me to use the documents and information I obtained while acting as his solicitor in these bankruptcy proceedings? An early reply would be appreciated.

The Committee's Secretary sent the following reply by fax and asked the lawyer if he wished the Professional Conduct Committee to consider the matter at its April meeting:

Rule 4 of the Rules of Professional Conduct addresses the issue of confidentiality of information. I draw your attention to paragraph 12 of the Commentary which reads as follows:

Disclosure may also be justified in order to defend the lawyer or the lawyer's associates or employees against any allegation of malpractice or misconduct, or in legal proceedings to establish or collect the lawyer's fees, but only to the extent necessary for such purposes.

23rd April, 1993

The steps you are proposing are designed to see if you can collect some of the \$18,000 you are owed for unpaid fees. The issue here would be the extent to which you would make revelation.

I should mention that the Professional Conduct Committee in the past two years has taken the position that a lawyer could petition a client into bankruptcy with a view to seeing what could be realized toward the payment of his fees.

If you are going to be testifying you should probably have counsel represent you.

Do you want me to put this matter to the Professional Conduct Committee at its April meeting on a no names basis?

The Committee was of the opinion that the lawyer could make revelation of such information as was necessary to establish his indebtedness and to collect the account as was indicated in the letter sent by the Committee's Secretary.

Such revelation would be all the more compelling were the trustee in bankruptcy being misled by the bankrupt as to the extent of his assets so as to defeat his creditors.

The Committee asks Convocation to adopt this opinion.

2. In February 1992 the Committee reported the following item to Convocation:

PROPRIETY OF A LAW FIRM PAYING AN  
ARTICLED STUDENT'S SALARY TO A CONSULTING  
COMPANY IN WHICH THE ARTICLED STUDENT HAS  
AN INTEREST IN OR CONTROLS

It came to the Society's attention that a law firm had entered into an arrangement with an articulated student to pay his salary to a consulting company in which the student has an interest or controls.

The Society's Secretary and the Committee's Secretary were of the opinion that this arrangement was not in order. Their opinion was influenced by a position taken in 1981 by the Committee that the following arrangement was not in order: a firm's management company was paying the salaries of three employed lawyers and then charging the law firm a contracted fee which was approximately 10% greater than the salaries paid to the lawyer employees by the management company. The Committee said that this arrangement would mean that a corporation could carry on the practice of law which is not permitted under the existing rules (vol. 6 of the Minutes of Convocation 1981 pgs. 223-224).

The Society's Secretary sent the following letter to Mr. E. John Freyseng, Q.C. of the Blaney, McMurtry firm:

I would like to thank you and your firm for its co-operation in this matter.

It turns out that Jane Knox of your office did have a conversation with Marilyn Bode in our Education Department. She did indicate to Ms. Knox that the arrangement being proposed was not inappropriate. She did not know that the vehicle in question was a consulting company nor that the student's salary was to be a consulting fee.

23rd April, 1993

The following is the position Stephen Traviss and I take:

An articled student is articled to a member of the bar. As part of that relationship the articling student renders services to the lawyer for which the articling student is paid and the law firm in return trains the student to be a lawyer.

A consulting company cannot be articled to a law firm. Accordingly it would be improper for a law firm to pay a student's articling salary to a consulting company even though that student may own or have a share in the consulting company.

With a view to putting this matter to rest once and for all, I propose to put your arrangement on the February agenda of the Professional Conduct Committee on a basis whereby there is no reference to your firm.

I will let you know what the Committee decides.

I would like to thank you and your firm for your patience and co-operation.

The law firm was not concerned if there was a reference to Blaney, McMurtry.

Mr. Freyseng sent a letter from the articling student in question, Bernd Christmas. His letter indicated that he was in agreement with what Mr. Christmas had to say.

Thank you for your letter of January 21, 1992. Pursuant to our telephone conversation I have spoken to Mr. Bernd Christmas and have reviewed your letter to me, with him.

Please find enclosed a submission by way of letter from Mr. Christmas, addressed to the Professional Conduct Committee. I would ask you to circulate it among the members of the Committee for their review, when this matter is placed on the February agenda of the said Committee.

My own opinion is that I agree with Mr. Bernd Christmas' position on this matter.

Mr. Christmas' letter is set out below:

I am writing to the Professional Conduct Committee in response to the above mentioned matter.

On January 21, 1992, the Secretary of the Law Society of Upper Canada, Mr. Richard Tinsley, wrote to Mr. John Freyseng, Q.C., a senior partner at Blaney, McMurtry, Stapells, the firm to which I am articled. In his letter he states that he and Mr. Stephen Traviss take the position that:

"An articled student is articled to a member of the bar. As part of that relationship the articling student renders services to the lawyer for which the articling student is paid and the law firm in return trains the student to be a lawyer.

23rd April, 1993

A consulting company cannot be articulated to a law firm. Accordingly it would be improper for a law firm to pay a student's articling salary to a consulting company even though that student may own or have a share in the consulting company."

I assume that this position was developed in response to how, as an articling student, I am receiving compensation from Blaney, McMurtry, Stapells. Please review the attached employment contract between myself and O.I. Employee Leasing Inc., the contract between O.I. Employee Leasing Inc. and the law firm, and my Articles of Clerkship.

From my interpretation of Mr. Tinsley's and Mr. Traviss's position, the problem seems to be that O.I. Employee Leasing Inc. is a consulting company and that since I am being paid by them, I am a consultant to the law firm. If this interpretation is correct then I submit that this is not correct. The relationship between the three parties, namely, O.I. Employee Leasing Inc., Blaney, McMurtry, Stapells, and me is well defined by the attached agreements. The relationship between my law firm and me is defined by the Articles of Clerkship. The three agreements do not conflict. I have agreed to fulfil my duties as laid out by in the Articles of Clerkship, namely:

- a) at all times to keep the secrets of the Solicitor and his/her partner or partners or brothers and his/her and their clients/Court;
- b) to obey and execute all lawful and reasonable demands;
- c) not to absent himself/herself from the service of the Solicitor without leave;
- d) truly, honestly and diligently to serve the Solicitor in accordance with the provisions of The Solicitors Act and the Rules of the Law Society of Upper Canada, at all times during the term hereof;
- e) to indemnify the Solicitor and make good and reimburse him/her for any damage, injury or loss that the Solicitor may suffer through in any breach by the Clerk of this contract or any covenants therein.

Upon close reading of my contract of employment you will find that I have agreed to fulfil the Articles of Clerkship as set out by the Law Society of Upper Canada.

I also submit that I have not breached the educational component of the Articles of Clerkship. On a day to day basis I am being supervised by numerous lawyers in regards to their files and am being taught how to be a lawyer, both from a practical and ethical perspective.

23rd April, 1993

It is submitted that the Articles of Clerkship do not prevent me from assigning my compensation for articling to a third party. Compensation is a matter that is to be dealt with between the law firm and me. This was even admitted to by an employee of the Law Society of Upper Canada, Ms. Marilyn Bode in your Education Department, when, prior to commencing my articles, Ms. Joan Knox, the personnel manager of Blaney, McMurtry, Stapells's, inquired whether any compensation package would be acceptable to the Law Society.

Furthermore, the attached agreements indicate that I am not a consultant. I do not have an interest in the leasing company nor do I have a share in the consulting company. The only "interest" that I do have is in seeing that this Native owned company succeeds and that other Natives such as I, can utilize the services of the company to further our careers in this ever increasingly competitive job market.

If questions arise from my brief submission, please feel free to contact me at Blaney, McMurtry, Stapells. I would also like to thank the Committee for allowing me to make a written submission.

Attached (numbered 1 - 7) are the attachments Mr. Christmas refers to in his letter.

The Committee, after some discussion, concluded that there was nothing wrong with the arrangement because it did not impact negatively on the student member's responsibilities or on the Law Society's ability to regulate his professional conduct. The Committee was also advised that the Clinic Funding Committee of the Ontario Legal Aid Plan had approved of an arrangement whereby some of the staff of the clinics were employees of a consulting firm and paid as such and that various government ministries including the Ministry of the Attorney General had no objection to such fiscal arrangements.

The Committee asks Convocation to accept its conclusion and to advise the Blaney, McMurtry firm that it has no problem with the fiscal arrangement it has entered into in arranging for Mr. Christmas to be paid.

Convocation agreed with the Committee's position and saw nothing wrong with the arrangement.

Two law firms (the Blaney, McMurtry firm is not one of them) have hired as first year lawyers two native Canadians and their salaries are being paid to O.I. Employee Leasing Inc. which is in turn paying the two lawyers.

The Committee considered this situation at its February 1993 meeting and thought that the payment arrangement for the two new associate lawyers was in order.

Arthur Scace has drawn the Committee's Secretary's attention to the Supreme Court of Canada authority that bears on point (see the discussion of the *Williams* case in the attached pages from *The Taxpayer* - numbered 8 & 9).

The Committee discussed this matter at the March meeting but decided to put it over to the April meeting.

23rd April, 1993

The Committee was of the opinion that the payment of an articling student's salary by the firm to a consulting company was quite separate and distinct from the situation where the salary of an associate lawyer was paid by the firm to a consulting company.

Articling students cannot practise law. Only lawyers can do this. Section 50 of the Law Society Act is the relevant authority.

Were the associate lawyers' salaries paid to the consulting company, it would mean that the consulting corporation would in essence be practising law which is not permitted at the present time.

The Committee asks Convocation to adopt this opinion.

C.  
INFORMATION

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1. SEPARATE RULE ON DISCRIMINATION BEING  
PREPARED BY THE EQUITY COMMITTEE FOR  
CONSIDERATION OF THE PROFESSIONAL CONDUCT COMMITTEE

Paragraph 5 of the Commentary under Rule 13 addresses the issue of discrimination. It reads as follows:

The lawyer shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, religion, creed, sex, sexual orientation, age, marital status, family status, or handicap in the employment of other lawyers or articled students, or in dealings with other members of the profession or any other persons.

The Equity Committee is of the opinion that a separate Rule of Professional Conduct should be created to give greater importance to the issue much as was done with sexual harassment. There will be a rule and a commentary to it that will serve to illustrate some concerns in this area in anticipation in part of the Government of Ontario's initiatives in the equity field.

Mr. Goudge from the Equity Committee was present to bring the Professional Conduct Committee up to date.

2. CITY OF TORONTO LOBBYIST DISCLOSURE BY-LAW

On February 5, 1993 the City of Toronto repealed its Lobbyist Disclosure By-Law.

23rd April, 1993

The Law Society had made representations to the City at the time of the original by-law's enactment because it was of the opinion that the by-law would interfere with the solicitor-client relationship. Appended is a copy of the report and attachments (numbered 10 - 14) from George Rust-D'Eye who had been advising the Law Society on this matter.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April, 1993

"M. Somerville"  
Chair

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

- A-Item 2 Attachments to a letter from Mr. Bernd Christmas to the Professional Conduct Committee. (Pages 1 - 7)
- A-Item 2 Article in the Taxpayer re: Williams. (Pages 8 - 9)
- C-Item 2 Copy of By-Law No. 135-93A and Report re: Lobbyist Disclosure By-Law-Repeal. (Pages 10 - 14)

THE REPORT WAS ADOPTED

DISCIPLINE COMMITTEE

Meeting of April 8, 1993

Mr. Strosberg spoke to Item A.-A.2. re: Duty Counsel before Convocation, Item A.-A.3 re: Counsel assisting Lay Benchers at Complaints Review, Item B.-B.1. re: Request to employ Brian A. Whyte as a law clerk, Item B.-B.2. re: Request of Richard Ranieri to occupy offices at firm of Solomon and Solomon and Item B.-B.3. re: Request to employ William Marinac as a paralegal.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, April 8th, 1993 at 1.30 in the afternoon the following members being present:

H. Strosberg (Chair), N. Graham, R. Murray, J. Palmer and S. Thom.

N. Angeles-Richardson, S. Kerr, J. Yakimovich, S. Jenkins, G. Macri, S. Hodgett and C. Shaw also attended.

A.  
POLICY

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A.1. REPORT OF THE JOINT SUBCOMMITTEE ON SEXUAL HARASSMENT

A.1.1. Your Committee considered the Report of the Joint Subcommittee on sexual harassment at its March meeting. At that time the Committee approved the Report subject to following amendments:

1. That Recommendation 3.e. ii be deleted and replaced with wording to the effect that the student be advised that there is an option to report a matter to the police (in appropriate cases);
2. That Recommendation 5.c.ii be deleted and be replaced with "invite the member of the profession, or the student, or both to attend before the Articling Sub-Committee to assist in resolving factual issues";
3. That Recommendation 5.e.ii be amended to replace the word "credibility" with "factual" in the second sentence.
4. That Recommendation 5 be amended to include a provision stating that the findings and decision of the Articling Sub-Committee are not admissible in any other Law Society proceeding.

A.1.2. The Report of the Joint Subcommittee on Sexual Harassment is before the April Convocation. The amendments recommended by your Committee have been incorporated into the current draft of the Subcommittee's Report.

A.1.3. Your Committee recommends that the Report of the Joint Subcommittee on Sexual Harassment be adopted.

A.2. DUTY COUNSEL BEFORE CONVOCATION

A.2.1. Your Committee considered whether to develop a roster of duty counsel to act on behalf of solicitors when they appear before Convocation. The view was expressed that there have been numerous examples of solicitors acting on their own behalf before Convocation who have validated the adage that the solicitor who acts on behalf of himself or herself has a fool for a client.

A.2.2. Counsel who are placed on the roster would develop an expertise in appearing before Convocation. It is envisioned that they will be given a small office on the day before Special Convocation and on Convocation day, so that solicitors may receive advice and have counsel appear on his or her behalf.

A.2.3. Your Committee discussed whether the counsel who are placed on the roster should provide their services without fee. The Committee was of the opinion that it is consistent with the tradition of service by members of the profession at the Law Society for counsel placed on the roster to provide their services without fee. The Committee is encouraged in this view by the strong response by members of the Law Society to the request for non-bencher members to serve on Committees of Convocation.

A.2.4. Your Committee recommends that the Canadian Bar Association - Ontario and the Advocates Society be contacted and asked to assist in the preparation of a roster of duty counsel to be available to appear and to represent solicitors before Convocation.

A.3. COUNSEL ASSISTING LAY BENCHERS AT COMPLAINTS REVIEW

A.3.1. Presently, the Society retains counsel to sit with a lay bencher serving as Complaints Commissioner at Complaints Review. In that capacity, counsel assists the Commissioner with legal and ethical issues that arise during a review. For a number of years, a single lawyer has served as counsel and the annual cost to the Society in counsel fees is approximately \$50,000.

A.3.2. Your Committee considered a suggestion that the Advocates Society and the Canadian Bar Association - Ontario be asked to suggest a roster of counsel to advise the Complaints Commissioners during Complaints Review. It is envisioned that the advantages to such a system would be two-fold:

- It would result in considerable cost saving for the Society.
- It will be of value to have different perspectives on the ethical and legal issues involved in Complaints Review.

A.3.3. Your Committee recommends that a roster of counsel to the lay benchers acting as Complaints Commissioners be developed. Such counsel are to provide their services without fee but with payment of disbursements approved by the Secretary.

A.3.4. Your Committee recommends that the roster be developed in consultation with the Canadian Bar Association - Ontario and the Advocates Society, and that an advertisement be placed in the *Ontario Reports* and the *Benchers Bulletin* inviting members of the profession to apply to be included on the roster.

A.3.5. Your Committee recommends that the selection of the counsel to serve in Complaints Review be made by the lay benchers subject to the approval of Convocation.

A.3.6. The Committee wishes to record that these recommendations do not in any way reflect upon the work of the counsel currently providing these services. This counsel has served the Complaints Review process well; the recommendations reflect efforts to improve the system and reduce overall expenses at the Law Society.

B.  
ADMINISTRATION

B.1. REQUEST TO EMPLOY BRIAN A. WHYTE AS A LAW CLERK

B.1.1. Martin Diegel has requested to employ Brian A. Whyte as a law clerk pursuant to Rule 20 of the Rules of Professional Conduct.

23rd April, 1993

- B.1.2. At Special Convocation on March 25, 1993, Mr. Whyte was suspended for four months. The particulars of Mr. Whyte's professional misconduct as found by the Discipline Committee and accepted at Convocation were as follows:
1. He improperly charged disbursements of approximately \$500 to \$700 per year for a period of 2 3/4 years to clients when, in certain instances, the disbursements had not been properly incurred.
  2. He failed to serve a number of clients in a competent and diligent manner, thereby breaching Rule 2 of the Rules of Professional Conduct by failing to keep notes on the search of title in every real estate file.
  3. He breached Rule 1 of the rules of Professional Conduct in that his actions, as set out in particulars 1. and 2., above, placed his integrity into doubt.
- B.1.3. The background to this finding of misconduct is that it was found that Mr. Whyte had not performed full title searches on a large number of real estate files over a number of years. Over a number of years the solicitor also charged small amounts (\$5 to \$10) to files where it could not readily be proven the charges related to the file to which they were charged.
- B.1.4. Your Committee was aware that the solicitor in question had shown great repentance at his hearings and that, although there were a great many files involved in the misconduct, little damage was incurred by the solicitor's clients.
- B.1.5. Your Committee was of the view, however, that, given the relatively short period of suspension incurred by Mr. Whyte and the fact that the penalty was imposed in the previous month, it would be inappropriate to give permission for the employment of Mr. Whyte as a law clerk. In the view of the Committee such permission would undermine the reasons for the suspension previously imposed by Convocation.
- B.1.6. Your Committee recommends that the request to employ Mr. Whyte as a law clerk be denied.
- B.2. REQUEST THAT RICHARD RANIERI BE PERMITTED TO USE OFFICE SPACE AT THE FIRM OF SOLOMON & SOLOMON
- B.2.1. Your Committee considered an application from the firm of Solomon & Solomon to permit Richard Ranieri to occupy office space at the firm.
- B.2.2. In a letter dated March 13, 1993, Melvin Raskin of the firm Solomon & Solomon stated that Mr. Ranieri does not occupy office space with the firm but occupies a otherwise vacant office which the firm hopes to ultimately rent out. From that office Mr. Ranieri performs non-legal work related to university and amateur sports broadcasting.

- B.2.3. Mr. Ranieri was suspended in February 1990 for non-payment of his annual fees. Notwithstanding an undertaking to the contrary, Mr. Ranieri continued to practise law. In January, 1993, he received a six month suspension retroactive to September 24, 1992 for continuing to practise while under suspension. At Convocation on January 26, 1993, Mr Raskin made a written request to continue to employ Mr. Ranieri as a paralegal during the period of his suspension. This request was denied.
- B.2.4. When the Staff Trustee contacted Mr. Ranieri in early February, 1993, Mr. Ranieri advised the Staff Trustee that he was going into the broadcasting business with Mr. Raskin, and that his business address and telephone number would continue to be that of the law firm. The Staff Trustee wrote to Mr. Raskin and Mr. Solomon advising them of Mr. Ranieri's suspension and seeking written assurances that they were complying with Rule 20. The present application was subsequently received by your Committee.
- B.2.5. The Staff Trustee recommended that the current application be denied given that Mr. Ranieri has failed to remove himself from the law firm during his suspension.
- B.2.6. Your Committee considered the matter and was of the view that Mr. Ranieri's presence in the law offices does constitute a violation of Rule 20 of the Rules of Professional Conduct. Furthermore, given the background to this application, your Committee resolved to deny permission for Mr. Ranieri to continue occupying office space at the firm of Solomon & Solomon.
- B.2.7. Your Committee recommends that the application for Mr. Ranieri to remain in the offices of Solomon & Solomon be denied.
- B.3. REQUEST TO EMPLOY WILLIAM MARINAC AS A PARALEGAL
- B.3.1. Your Committee considered a request from John L. Hill to employ William Marinac, a disbarred lawyer, pursuant to Rule 20 of the Rules of Professional Conduct.
- B.3.2. In January, 1987, Mr. Marinac was convicted of 22 counts of fraud involving mortgages. He was subsequently disbarred on an uncontested basis. Mr. Marinac has been paroled since May, 1991.
- B.3.3. Mr. Hill's firm deals primarily in the area of prison law. He proposes to employ Mr. Marinac in the drafting of documents, the performance of legal research, interviewing and other areas where law clerks may be utilized.
- B.3.4. Your Committee considered this application and is of the view that, given the seriousness of Mr. Marinac's misconduct, it is inappropriate for him to be employed in a law office.

- B.3.5. Your Committee recommends that the application to employ Mr. Marinac be denied.

Note: Motion, see page 223

C.  
INFORMATION

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C.1. EMPLOYMENT PURSUANT TO RULE 20 OF THE RULES OF PROFESSIONAL CONDUCT

C.1.1. The Committee considered staff proposals for guidelines for employment of disbarred or suspended lawyers pursuant to Rule 20 of the Rules of Professional Conduct. The discussion led some members of the Committee to question whether Rule 20 should continue to allow for the employment of disbarred and suspended persons with the approval of Convocation. The Rule was questioned based on principle and cost implications for the Society.

C.1.2. The Committee requested that the staff design a process for the systematic handling of requests to employ pursuant to Rule 20. The staff should report to the Committee as to the cost implications of such a system. These costs are to include the costs of processing and policing employment pursuant to Rule 20 in order to ensure that the parties involved are complying with the conditions placed upon them by Convocation.

C.1.3. The Committee further requested that the Audit Department of the Law Society perform audits of those cases where approvals to employ suspended or disbarred lawyers are currently in effect. The aim of these audits is to assess the extent to which the conditions placed upon the approvals are complied with.

C.1.4. The Special Committee to Review the Rules of Professional Conduct has requested that the Discipline Policy Committee convene a working group to consider Rule 20. The Committee has decided that the Committee as a whole will make recommendations concerning Rule 20 once the background work as outlined in this Report has been completed.

C.2. NOTIFICATION TO THE POLICE OF ILLEGAL CONDUCT

C.2.1. Currently the Law Society has a policy on how to respond to requests made by the police for access to information contained in Law Society files. The Chair of the Discipline Policy Committee considers all such requests and in the exercise of his discretion provides instructions to the staff.

C.2.2. The Committee was asked to consider in what circumstances the Society should initiate contact with the police when information comes to the Society's attention indicating that a lawyer may have engaged in illegal conduct.

C.2.3. Your Committee has referred this matter to the subcommittee of the Discipline Policy Committee which is examining the appropriate conduct of the Law Society when it is contacted by the police in the course of an investigation.

C.3. AUTHORIZATION OF DISCIPLINE CHARGES

C.3.1. Once a month, the Chair and/or one or both of the Vice-Chairs of your Committee meet with the Complaints and Discipline staff to consider requests for formal disciplinary action against individual lawyers.

C.3.2. The following table shows the number of requests made by Discipline, Complaints and Audit staff for the month of February 1993.

	<u>Sought</u>	<u>Obtained</u>
<u>April</u>		
Discipline	1	0
Complaints	19	13
Audit	28	25
Total:	38	

Total number of complaints authorized for 1993:

January	39
February	34
March	34
April	38
Total:	145

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April, 1993

"H. Strosberg"  
Chair

The following material was distributed to Convocation:

- (1) Letter and enclosures from Mr. Brian A. Whyte to Mr. Harvey Strosberg dated April 20, 1993 re: Brian A. Whyte, Application by Mr. Martin Diegel pursuant to Rule 12.
- (2) Letters from Mr. Bill Marinac dated December 22, 1992 re: Employment with John Hill, Esq. and January 26, 1993 re: Paralegal permission - William Marinac.

Convocation took a brief recess at 3:45 p.m. and resumed at 4:00 p.m.

RESUMPTION OF DISCIPLINE COMMITTEE REPORT

It was moved by Julaine Palmer, seconded by Fatima Mohideen that the Marinac request be granted.

Withdrawn

It was moved by Roger Yachetti, seconded by Paul Copeland that the Marinac matter go back to Committee for further consideration.

Carried

Ms. Elliott and Mr. Brennan did not participate in the discussion of the Brian Whyte matter.

THE REPORT AS AMENDED WAS ADOPTED

JOINT SUB-COMMITTEE ON SEXUAL HARASSMENT

Mr. Goudge presented the Report of the Joint Sub-Committee on Sexual Harassment.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE JOINT SUB-COMMITTEE ON SEXUAL HARASSMENT asks leave to report:

The Joint Sub-Committee on Sexual Harassment met with the Discipline Policy Committee and with the Women in the Legal Profession Committee on Thursday, March 11, 1993, and with the Legal Education Committee on Thursday, April 8, 1993.

The members of the Joint Sub-Committee on Sexual Harassment are: Neil Finkelstein, Stephen Goudge, and Joan Lax. The secretary is: Marilyn Bode (the Articling Director).

A.

POLICY

A.1 JOINT SUB-COMMITTEE ON SEXUAL HARASSMENT REPORT

A.1.1 The Joint Sub-Committee on Sexual Harassment was constituted by the Discipline Policy Committee, the Legal Education Policy Committee, and the Women in the Legal Profession Committee to develop procedures to deal with complaints of sexual harassment by articling students against articling principals.

A.1.2 The Joint Sub-Committee on Sexual Harassment has presented a draft of its "Report of the Joint Sub-Committee on Sexual Harassment" to the Articling Subcommittee, the Discipline Policy Committee, the Legal Education Committee, and the Women in the Legal Profession Committee, and has incorporated the recommendations made by the Articling Subcommittee and the three Committees respectively into its final report.

23rd April, 1993

A.1.3 Recommendation: It is recommended that the attached document (pages 1 - 20) entitled "Report of the Joint Sub-Committee on Sexual Harassment" be adopted by Convocation.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April, 1993

Joint Sub-Committee on Sexual Harassment

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

A-Item A.1.3 Report of the Joint Sub-Committee on Sexual Harassment dated April 8, 1993. (Pages 1 - 20)

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

Meeting of April 8, 1993

Mr. McKinnon spoke to Item A.-A.1. re: Joint Committees of Legal Aid and Professional Standards and to Item A.-A.2. re: Special Committee to review the Rules of Professional Conduct.

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 8th of April, at 11:30 a.m., the following members being present: C. McKinnon (Chair), R. Murray (Vice Chair), M. Weaver (Vice Chair), P. Furlong, N. Graham, C. Hill, M. Trofimenko.

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

A.  
POLICY

A.1. Joint Committees of Legal Aid and Professional Standards

Note: this matter has been carried forward from the March report.

A.1.1 Background

a) Competence Standards and the Ontario Legal Aid Plan

Section 27 of the regulations under the *Legal Aid Act* permits the establishment of criteria for entry to and retention on the legal aid panels. To date, no such criteria have been set. As a result, when faced with lawyers who are apparently delivering sub-standard services, the Provincial Director of the Plan has been unable to direct the removal of such lawyers from the panel or as duty counsel, or prevent their admission to the panel.

The Legal Aid Plan is also facing increasing pressure from the provincial government with respect to the cost of Legal Aid services, particularly in the area of criminal law. Of the 5,459 lawyers who billed the Plan in 1991-92, 237 (4.4%) received more than \$200,000. In addition, the Plan has concerns about the quality of services being delivered in high-volume practices. These circumstances led to the establishment of a sub-committee of the legal aid committee with province-wide representation, to consider standards. The profession, however, raised concerns about the propriety of this task being undertaken by the Legal Aid Plan rather than the Law Society, as a result of which Convocation approved the creation of joint committees of the Legal Aid and Professional Standards Committees to address the feasibility of standards in the areas of criminal law, family law and immigration/refugee law.

A.1.2. b) Competence Standards and the Law Society

The Professional Standards Committee is responsible for the creation, maintenance and enforcement of standards of competence among members of the profession. This mandate includes the formulation of minimum standards of practice in those branches of the profession for which it is practical to do so.

To give effect to this mandate, both the Committee and its sub-committees considered what the "standards" should be, and the uses to which they should be put. The result has been the formulation of checklists in a number of fields, including criminal defence practice and family law (publication of which is pending).

While the form and content of the checklists has varied somewhat, the general purpose of these checklists was intended to:

1. provide members with a practice manual that could be used regularly and in a variety of circumstances;
2. alert members to problem areas, both from an ethical and a loss prevention standpoint;
3. give practice reviewers a reference document when reviewing the practice of a lawyer participating in the Practice Review Programme.

As well, amendments to the *Law Society Act* have been proposed, that will give the Law Society the power to make and enforce orders regulating professional competence. These amendments would constitute the adoption by the provincial government of the "Reform Package" of The Law Society which, *inter alia*, would bring about substantial reform in the area of Professional Standards.

A.1.3. c) Complaints/Errors & Omissions Data

Criminal Law: 4% of complaints, 1986-1992  
(980 in total; cf. 22,330 against the profession as a whole)

E&O claims - no specific statistical data (included in claims category "Other", which is 2.5% of all E&O claims)

Family Law: 17% of complaints, 1986-1992  
4% of E&O claims

Refugee/  
Immigration Law: complaints - no specific statistical data (included in category "Other", which is 17% of all complaints)

E&O claims - no specific statistical data (included in claims category "Other", 2.5% of all E&O claims)

A.1.4. d) Other Considerations

i) Criminal Law

It is anticipated that the Martin Report will recommend more formal pre-trial procedures, whereby experienced judges, knowledgeable Crown attorneys and informed, instructed defence counsel will meet to review, narrow and, where possible, resolve, the issues in a criminal matter, so that trials will be held only where a consensual disposition is not possible. Courtrooms and judges will be made available so that guilty pleas can be dealt with forthwith. Work is presently underway in developing a Draft Protocol with respect to the implementation of the Martin Report in two targeted areas; Toronto and Central East Region. The Professional Standards and Legal Aid Committees are cooperating in the development of Draft Protocol.

ii) Family Law

In the spring of 1992, the Attorney General announced that legal aid offices staffed by salaried lawyers would be established to deal with family, youth and refugee matters. The Law Society expressed concern that this initiative could lead to a two-tier system of justice, and compromise the interests of legal aid clients, particularly women. Because access to services in some areas poses a problem in family law, the Law Society agreed to co-operate in the development of a limited number of family law pilot projects. Continued involvement by the Society will depend upon an assessment of the effectiveness of the pilot projects.

iii) Immigration/Refugee Law

In the immigration law field, recent legislative change may reduce the demand on Legal Aid in this area of law by 40% to 60%. The Law Society has been invited to discuss with the Ministry of the Attorney General the feasibility of pilot project staff models in immigration/refugee law; Convocation has decided to defer such discussion until after the legislation has been in place for sufficient time to permit determination of the actual impact of the legislation on the funding requirements of the Legal Aid Plan.

A.1.5. The Target Audience for Standards

The standards that are developed will presumably be used to measure the level of competence displayed by a lawyer in providing services. It is therefore necessary to define the term "competence". The following are possible definitions, which are not mutually exclusive:

- i) Deliberate Incompetence - lawyers who knowingly structure a practice in such a way that a consistently unacceptable standard of service is provided (e.g. high volume/low fee practices in such areas as criminal law).
- ii) The Under-Resourced Practice - lawyers who lack the office systems and staff support needed to provide an adequate level of service.
- iii) The Incompetent Practice - lawyers who lack the advocacy skills and substantive legal knowledge required to provide competent services.

A definition of competence or incompetence which captures all three examples would embrace not only lawyers who lack the qualities of a capable practitioner but also lawyers whose deficiencies may be attributable to financial problems and lawyers who have made a conscious business decision to provide substandard services. These issues are particularly relevant to a review of rule 2, which the Committee has been requested to undertake.

A.1.6. Definition of Standards

There are at least four methods of approaching the definition:

1. A canon of ethical principles: relatively broad guidelines, similar to the present Rules of Professional Conduct.
2. A "practice manual": this approach has been followed to date, in developing checklists.
3. A code of competence: giving the Law Society and its agents the means by which to enforce minimum ethical, procedural and substantive standards.
4. Competency regulations: specific to lawyers seeking admission to and retention on legal aid panels.

A.1.7. a) Option #1 - Canon of Ethical Principles

As with the present Rules of Professional Conduct, this option would set relatively broad guidelines for the profession, violation of which could form the basis of disciplinary action. In essence the canon would be a set of moral indicators, with little or no impact on civil liability. The costs of implementing this proposal would be marginal, consisting primarily of drafting the principles, disseminating them to the profession, and auditing members' conduct in response to complaints of violation, as is presently done.

A.1.8. b) Option #2 - Practice Manual

This option, geared towards particular areas of practice, involves setting out a series of steps to be taken and issues to be considered in each area of law. Again it provides guidelines rather than enforceable standards, and as in option #1 would result in little civil liability and negligible financial outlay.

A.1.9. c) Option #3 - Code of Competence

A code of competence would provide enforceable standards of conduct, rather than mere guidelines. Of the four possible options, it is the most comprehensive and far-reaching. By drafting such a Code, the Law Society would be indicating to the profession in very specific terms the nature and quality of representation the profession is expected to deliver to the public, thus establishing a benchmark against which an individual member's services could be measured, in civil negligence suits or discipline proceedings. This approach would require the establishment of enforcement mechanisms, including educational programs to remedy substandard conduct, monitoring and reporting of such conduct, peer reviews, and prosecution for violations of the code. The financial impact on the Society would be significant, both with respect to the development of the code, the education of the profession and the development and maintenance of enforcement mechanisms. It is likely that this option would require an initial financial commitment in excess of \$500,000 and an on-going commitment of at least that amount annually, for monitoring and enforcement of compliance with the code. It would have an impact on a number of branches of the Law Society, including Complaints, Discipline, Standards and Legal Education.

A.1.10 d) Option #4 - Competency Regulations

Regulations could be drafted that would give the Legal Aid Committee criteria by which to evaluate the competence of and, if necessary, reject the application of, members seeking admission to the legal aid panels. A procedure similar to that used to vet potential articling principals, Bar Admission Course instructors, applicants for specialist designation, and the like, could be followed:

- a member submits a formal application for admission to a legal aid panel or to act as duty counsel;
- the member's name is vetted through various departments of the Law Society, including Discipline, Complaints, Errors & Omissions, Audit and Standards;

- the member's application would be rejected in the following circumstances:

i) if the member has received in excess of a pre-determined number of complaints;

ii) if the member has made in excess of a pre-determined number of E&O claims;

iii) if the member is in discipline;

iv) if the member is participating in the Practice Review Programme;

v) in such other circumstances as may be appropriate.

- either all members would be requested to make formal application, in order that the vetting process can be applied across the board, or some form of "grandfathering" could occur

- the process would be repeated on a regular basis e.g. yearly

This option would not impose civil liability on members. Some expense would arise because of the necessity of drafting regulations and forms, and as a result of meetings of the sub-committee, but the vetting mechanisms are already in place.

A.1.11. Requirements - Competence Standards

In examining the question of competence, the following issues should be addressed:

1. The definition of incompetence: the existing Rule 2 is the starting point for discussion and is being reviewed by the Committee as a working group. Is it adequate for the purpose?

2. What is the intended purpose of the proposed standards:  
i) guidance only?  
ii) profession-wide enforcement mechanism?  
iii) governing admission to Legal Aid panels?

Should the standards be narrowly defined, or broadly, to achieve this purpose?

3. What is the financial impact of setting "standards", including the feasibility of monitoring and enforcing compliance with same?

4. How should the interests of the Law Society and the Legal Aid Plan be addressed, with respect to the following issues:

i) monitoring and compliance procedures;  
ii) continued membership on legal aid panels;  
iii) role of the Area Director and the Area Committee in any compliance procedure?

A.1.12. Comment

The initiatives undertaken by the Professional Standards Committee to date have been aimed at assisting members in improving the quality and level of service being delivered to the public. The checklist approach was used in part to avoid the possibility that the profession, the courts and the public would view the Committee's endeavours in this regard as establishing a mandatory standard of service. For that reason, there are disclaimers in the existing checklists which provide that the checklists are general in nature and should not be viewed as a comprehensive instruction manual.

A.1.13. Recommendations

The Committee therefore recommends the following:

1. That the Legal Aid Committee consider drafting competency regulations, as set out in option #4 above, establishing the basis on which a member's admission to or retention on a Legal Aid Panel would be denied, focusing particularly upon that member's complaints, claims, audit, discipline and standards history;
2. That the Legal Aid Committee consider instituting a procedure whereby the names of applicants for duty counsel or legal aid panels would be vetted through the various departments of the Law Society, including Discipline, Complaints, Errors & Omissions, Audit and Professional Standards, so as to gather information as to whether a member violates the competency regulations as proposed in option #4 above;
3. That the Professional Standards Committee, in its capacity as a working group reviewing Rule 2 of the Rules of Professional Conduct, define competence in terms of a general standard of acceptable practice, taking into consideration the legislative amendments proposed with respect to professional standards as a result of the Reform Implementation Committee's report. The Committee decided that it was neither necessary nor financially viable to develop codes of standards for specific areas of law; in particular, the Committee was of the view that if it were advisable that specific areas of law be targeted, the first priority would be Real Estate which generates the greatest impact on Errors and Omissions claims.

Note: Amendment, see page 234

4. That the Professional Standards Committee undertake this initiative as part of its mandate in reviewing Rule 2 of the Rules of Professional Conduct.

A.2. SPECIAL COMMITTEE TO REVIEW THE RULES OF PROFESSIONAL CONDUCT

Note: This matter has been carried forward from the March report and the Committee further considered this matter at the April meeting.

- A.2.1 In response to an invitation from Marc Somerville, Chair of the Special Committee to Review the Rules of Professional Conduct, the Committee at its February meeting decided to strike the Committee as a whole as a Working Group to review the adequacy of rule 2 (Competence and Quality of Service). The review of Rule 2 encompasses the issues raised in item #1 of this Report with respect to competence standards. The Committee had an initial meeting for this purpose and will submit a preliminary report by April 30, 1993, as requested.
- A.2.2. The Chair reported to the Committee with respect to the pending Martin report. It is anticipated that the issues raised and recommendations made in the report will be addressed through practice directions from the appropriate level of court. In addition, the Chair reviewed with the Committee developments to date regarding the review of rule 2 (Competence and Quality of Service), the impact on the Law Society's regulation of competence of the proposed reforms to the *Law Society Act*, and the Committee's recommendation at the March meeting that a rewritten rule 2, in conjunction with the reform package, will provide a sufficient framework within which the Law Society can address concerns with respect to competency of members.

B.  
ADMINISTRATION

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- B.1. JOHN RICHARD CIRILLO
- B.1.1. By Order of Convocation dated May 29, 1987, John Richard Cirillo was permitted to resign his membership in the Society. The following particular of professional misconduct was admitted and found established:
- With the knowledge that \$100,000. in gold bullion in his possession had probably been obtained from the proceeds of crime which had flowed through his trust account to purchase the gold, he retained possession of the gold for personal gain and thereafter misled police officers and Law Society investigators as to the true facts and his involvement.
- B.1.2. John R. Cirillo had been called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 9th day of April, 1981.
- B.1.3. Mr. Cirillo's application for readmission was heard the 9th day of October, 1992. The Admissions Committee recommended to Convocation that Mr. Cirillo's application be accepted, subject to the Professional Standards Committee considering his case, and deciding what further education or conditions should be required to ensure that he will provide adequate service to the public. Convocation approved this recommendation on January 28, 1993.
- B.1.4. The Committee reviewed Mr. Cirillo's history, both recent and late, and has directed that the following conditions be imposed upon him:

1. That he write, and successfully complete, examinations in Real Estate and Business Law, set by the Department of Education, such examinations to be either those written for the Bar Admission Course or the transfer exams, as may be decided by the Director of Education;
  2. That he participate in and co-operate with the recommendations of the Practice Review Programme;
  3. Upon the approval of the Director of Education, that he speak to students in the Bar Admission Course about the events that led to his resignation.
  4. That he provide to the Department of Audit and Investigation, for a two year period, his monthly trust reconciliation statements.
- B.1.5. Mr. Cirillo will be permitted to be called to the Bar upon completion of the first condition, in recognition that the second and fourth conditions can be satisfied only when he is a member of the practising bar.

C.  
INFORMATION

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C.1. FAMILY LAW CHECKLIST

- C.1.1. A draft of the Family Law Checklist was distributed to the Committee members at the February meeting. The checklist will be reviewed by the County and District Law Association Presidents at their May plenary session.
- C.1.2. Because the checklist is being reviewed by the County and District Law Associations, the Committee deferred consideration of the issue to the June Committee meeting.

C.2. CIVIL LITIGATION CHECKLIST

- C.2.1 Ron Manes, Chair of the Civil Litigation Sub-Committee, has reported to the Committee the consensus of the Sub-Committee that the topics to be reviewed in the proposed checklist are significant, and of such magnitude as to be more properly published in textbook format. Publication of such a textbook is not within the mandate of the Sub-Committee. The Sub-Committee has therefore recommended that they discontinue preparation of the checklist and disband, and the Committee has accepted this recommendation, recognizing that there are texts which address the issues considered by the Sub-Committee.

C.3. WILLS AND ESTATES CHECKLIST

C.3.1. The Wills and Estates Sub-Committee met on March 10, 1993. The Sub-Committee felt it could not approve of a two-part checklist, one for more complex wills, and one for simplified wills. The sub-committee was of the view that only one checklist should be drafted from which members can extract the issues relevant to the individual client's circumstances. The sub-committee will be meeting with representatives from the County and District Law Associations to discuss the sub-committee's concerns about the proposed amendments to the checklist.

C.4. PROFESSIONAL STANDARDS DEPARTMENTAL REPORT

C.4.1. There are now 114 open files in the Practice Review Programme, as a result of 7 lawyers being authorized for participation in March, and 2 files being closed. An average of five referrals per month have been authorized in the current fiscal year, an increase in reviews of 500% (to date) over previous years. In March, three participating lawyers appeared before a review panel consisting of Mary Weaver and Susan Elliott. Additional review panels are now being scheduled for April, May and June, 1993. It is anticipated that a further 9 or 10 participating lawyers will attend before these panels.

C.4.2. Staff of the Professional Standards and Errors & Omissions Departments are meeting on an irregular but frequent basis in order to ensure that the concerns of both departments are being addressed in the Practice Review Programme. Mechanisms are being developed for identifying, and prioritizing, members whose E&O history suggests they may benefit from the Programme. An effort is also being made to ensure that there is more frequent exchange of information between the two departments, given the mutuality of interests that exists.

C.4.3. The Joint Sub-Committee on Requalification has prepared an initial draft of the proposed requalification policy. This draft will be presented to Convocation for information purposes only in April, 1993. The draft will also be presented to the Professional Standards, Legal Education and Women in the Legal Profession Committees, as well as being circulated to interested members of the profession and relevant organizations, for their comments.

C.4.4. Staff of the Complaints and Professional Standards Departments met recently with their counterparts at the College of Physicians and Surgeons of Ontario, exploring the remedial programs offered and discussing alternative dispute resolution techniques.

C.5. PRACTICE ADVISORY SERVICE - STATUS REPORT

C.5.1. The Service responded to 586 calls in January, 465 of which came from members, the balance being from support staff, accountants and others. Members called to the Bar in the past 3 years constitute nearly one quarter of all calls to the Service.

23rd April, 1993

- C.5.2. The popularity of the start-up workshop is such that registrations are no longer limited to twenty members. As a result, the format has changed to more of a lecture style, and is attracting both newly-called participants and members who have been in practice for significant periods of time.
- C.5.3. Practice Advisors from Ontario, Alberta and British Columbia hope to arrange an informal meeting to coincide with the CBA conference in Quebec City in August, 1993.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April, 1993

"C. McKinnon"  
Chair

It was moved by Roger Yachetti, seconded by Fran Kiteley that Recommendations #3 and #4 under Item A-A.1.13. of the Report be referred back to the Committee for improvement of the wording.

Withdrawn

An amendment was made by the Treasurer and accepted by the Chair to delete the second sentence in Recommendation #3 and replace it with a statement that the question in any case whether a member had practised to standard would be determined on evidence with respect to the appropriate standard in the circumstances of that case.

THE REPORT AS AMENDED WAS ADOPTED

SPECIAL CERTIFICATION BOARD

Meeting of April 8, 1993

Mr. Yachetti spoke to Item A.-A.1. re: Certification of Workers' Compensation Law Specialists and Item A.-A.3. re: Recertification of "Grandfathered" Specialists.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday, the 8th of April, 1993 at twelve o'clock noon, the following members being present: R.D. Yachetti (Chair), R.D. Manes (Vice-Chair), J. Callwood, M.L. Pilkington and G.P. Sadvari. S. Thomson, of the Law Society, was also present. At one o'clock in the afternoon, the following participants also attended the meeting: D.W. Brady (Chair - Workers' Compensation Law Specialty Committee), R.C. Fillion (Chair - Labour Law Specialty Committee), and S.R. Ellis (Chair) and E.S. Newman of the Workers' Compensation Appeals Tribunal.

The Education Sub-Committee of the Specialist Certification Board, including recommended new members (see Item B.2. below), met on Thursday, the 8th of April, 1993 at ten o'clock in the morning, the following members being present: M.L. Pilkington (Chair), R.D. Manes, D.G. Price, G.P. Sadvari and G.D. Watson. S. Thomson, of the Law Society, was also present.

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

The Criminal Litigation Specialty Committee met (in person/conference call) on Friday, the 26th of March, 1993 at one o'clock in the afternoon.

The Intellectual Property Law Specialty Committee met (in person/conference call) on Thursday, the 1st of April, 1993 at four o'clock in the afternoon.

A.

POLICY

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A.1. CERTIFICATION OF WORKERS' COMPENSATION LAW SPECIALISTS

A.1.1. In May 1992 the Workers' Compensation Law Specialty Committee submitted its Report to the Board, which included amended Standards for certification of Workers' Compensation Law Specialists (following consultation with the profession), the Application Form, the Interviewer's Guide and the Statement of Reference.

A.1.2. The Committee defined the Specialty field as follows:

"The practice of workers' compensation law is the practice of law dealing with the Workers' Compensation Act and regulations; the operation of the Workers' Compensation Board [the "WCB"], its policy, its appeal and its hearing process and its caselaw; the Workers' Compensation Appeals Tribunal [the "WCAT"], its procedures, its caselaw and its interrelation with the WCB and the Courts."

A.1.3. The practice experience requirements of the proposed Standards reflect a flexible approach, one third of professional time devoted to the practice of workers' compensation law in the past three years being one of several options that would satisfy the practice experience requirements.

A.1.4. The Report also included a brief statement as to how the public interest would be served by having access to Certified Workers' Compensation Law Specialists [APPENDIX "A"].

A.1.5. The Committee is of the view that every Workers' Compensation Law Specialist applicant should be orally examined, and the Interviewer's Guide provides a reasonably comprehensive topic index and point system.

A.1.6. The Labour Law Specialty Committee submitted its Report to the Board in June 1992. Just prior to the 1992 summer recess, the Board was considering whether the public would be better assisted by including the two Specialties under an umbrella Employment Law Specialty: Employment Law (Labour Relations); Employment Law (Workers' Compensation); and Employment Law (Wrongful Dismissal); and invited Messrs. Brady, Fillion, Ellis and Ms. Newman to the April 1993 meeting to address this proposal, with particular focus on the Workers' Compensation Law Specialty.

A.1.7. Umbrella Employment Law Specialty

A.1.7.1. Messrs. Brady and Ellis and Ms. Newman were of the view that, more akin to personal injury law than employment law, the Workers' Compensation Law Specialty should not be linked with an Employment Law Specialty.

A.1.7.2. A member of the Committee, D. Craig, who is also the Executive Director and Staff Lawyer of the Brampton Community Legal Services, had previously stated:

"...workers' compensation is not an employment law problem at all. The issues which present themselves for workers in workers' compensation cases rarely involve the employer-employee relationship. The issues are almost always between the worker and the Workers' Compensation Board, not between the worker and the employer..."

A.1.8. Public Need

A.1.8.1. The Committee maintains that Workers' Compensation Law is a substantial and unique body of law which is evolving at a revolutionary rate that demands standards of practice.

A.1.8.2. The Board was persuaded that there is a significant aspect of public protection associated with this Specialty and that the field of workers' compensation law is much more obscure and difficult than is generally realized and the consequences and potential damage that ill-equipped counsel can do is immense.

A.1.8.3. R. Ellis advised that, out of many more routine files opened by the Workers' Compensation Board, approximately 15-20,000 serious cases are dealt with annually. The standard of practice before this Board is generally not good.

A.1.8.4. R. Ellis and E. Newman also testified that they see a lot of poor work before the Workers' Compensation Appeals Tribunal. The stakes are extremely high, and the clients often do not realize that they are not being well served.

A.1.9. Barriers to Entry?

A.1.9.1. The Board was impressed with the proactive approach of the Specialty Committee, which has proposed putting together a continuing legal education program to train Workers' Compensation Law Specialists. APPENDIX "B" outlines the Committee's proposals in this regard. It is intended that the educational component should complement, not replace, other requirements including appropriate professional experience, satisfactory references, and obligatory oral testing.

A.1.9.2. The Workers' Compensation Appeals Tribunal sits in six cities in this province, in virtually all cases hearing from local counsel. The proposed Certification Program for Workers' Compensation Law Specialists would provide lawyers in small communities an opportunity to develop special expertise and then advertise that expertise to the public.

A.1.9.3. E. Newman has estimated that there may be as many as 200 lawyers throughout Ontario who could qualify for certification in the workers' compensation field.

A.1.10. Sub-Division of Workers' Compensation Law Specialty

A.1.10.1. The proposed Workers' Compensation Law Specialty Standards had recommended the issuance of two certificates: Representing Workers and Representing Employers. It was argued that there is very little crossing-over in this field. Whereas both Employer Specialists and Worker Specialists would be required to be knowledgeable and experienced in the practice of workers' compensation law, it was proposed that Worker Specialists would not be required to be knowledgeable or experienced with respect to employer assessments and the assignment and distribution of claims costs to employers.

A.1.10.2. Nevertheless the Board is of the view that there should be no sub-division of the Workers' Compensation Law Specialty into "Representing Workers" and "Representing Employers" and that the Standards should be revised to recognize that the assessment side of the practice is optional.

A.1.11. Recommendations

A.1.11.1. Your Board recommends that the Workers' Compensation Law Specialty be authorized for inclusion in the Specialist Certification Program.

A.1.11.2. Following minor revisions of the Standards by the Committee and a final review by the Board, the Workers' Compensation Law Specialty Committee will advertise that it is ready to review applications and will simultaneously begin the work of preparing an appropriate training program, which will be followed with great interest by the Education Sub-Committee.

A.1.12. The Board will reconsider the Report of the Labour Law Specialty Committee at its meeting in May.

A.2. INTERNAL RECORD OF SPECIALIST APPLICANTS -  
PARTICIPATION OF PROFESSIONAL STANDARDS DEPARTMENT

A.2.1 In March 1993, the Board recommended that it should be in the final stages of the assessment at the Board level that Law Society internal information will have any bearing on the outcome of the application.

A.2.2. Following consultation with the Professional Standards Department, it has now been recommended to the Board that an assessment of the internal records of all applicants should be conducted immediately upon receipt of the applications, prior to publication of names in the Ontario Reports and the contacting of referees. The Professional Standards Department has agreed to assist the Specialist Certification Program by preparing these assessments for an appropriate charge.

A.2.3. It is proposed that all application packages will advise that a "professional standards check", described below, will be conducted at the outset of the receipt of an application and, in circumstances where the member's profile raises concerns that merit a referral to the Practice Review Programme, the certification process will be put in abeyance pending successful completion of the Programme (a process that could take up to two years). Participation of Specialist applicants in the Practice Review Programme would be kept confidential.

- A.2.4. A description of the process followed in determining whether a lawyer should be invited to participate in the Practice Review Programme has been recommended as follows:

"Lawyers are referred to the Practice Review Programme from within the Society, through departments such as Complaints, Discipline, Audit and Errors and Omissions, and from external sources such as County and District Law Associations and members of the practising bar. When a referral is made, staff prepare a "profile" of the lawyer referred, setting out the lawyer's complaints, discipline, audit, errors and omissions and membership history. The profile is analyzed to determine whether it portrays practice problems which may benefit from the remedial assistance offered by the Programme. Typically, the focus is not on individual complaints, claims or other problems, but on the larger picture described by the profile. The profile, together with staff recommendations as to the appropriateness of the referral, are submitted to the Chair of the Professional Standards Committee. If the Chair agrees that the member may benefit from participation in the Programme, written authorization is given to invite the member to participate, and a letter of invitation is sent.

Complaints and claims arising from delay, negligence, failure to communicate, failure to account, failure to report, failure to follow client instructions, inadequate knowledge of the law, poor management, outstanding financial obligations, missed limitation periods, and similar issues are indicia of practice management problems."

- A.2.5. The Board will consider whether the "Ethical Standards" paragraphs of all Specialty Standards will require amendment.

A.3. RECERTIFICATION OF "GRANDFATHERED" SPECIALISTS

- A.3.1. At the commencement of the Certification Program, many senior lawyers were "grandfathered" (automatically certified with no application requirement) as Specialists in the fields of Civil and/or Criminal Litigation. The "grandfathering" of Specialists occurred from August 25, 1988 (the largest group) to February 28, 1989. The first lawyers who had submitted applications were certified as Specialists in May 1989.
- A.3.2. All Specialist Standards state the following, or a close variation thereof: "Certificates of specialty shall have currency for a period of five years from their date of issue, after which they shall automatically lapse. Applications for recertification shall be governed by the same standards then applicable for certification."
- A.3.3. In March 1993, application packages identical to the application package which is sent to first-time applicants were mailed to the 250 "grandfathered" Specialists whose certificates are due to expire on August 24, 1993. A sample Specialist certificate, showing the dated seal which will be provided upon recertification (APPENDIX "C") accompanied the packages.
- A.3.4. Many of the "grandfathered" Specialists have since expressed opposition to the idea that applications for recertification should be governed by exactly the same standards as first-time applications, and the Board has been encouraged to reconsider its recertification requirement.

- A.3.5. Although the Board remains of the view that there must be some demonstration by those lawyers who wish to retain the Specialist designation of continued substantial involvement and continuing education or professional development in the Specialty field, the Board also agrees that, initially at least, the recertification procedure must be changed.
- A.3.6. It is recommended that "grandfathered" Specialists who wish to renew their Specialist Certificates must meet the following requirements:
  - A.3.6.1. - be a member in good standing of the Law Society of Upper Canada;
  - A.3.6.2. - have a satisfactory professional standards record over the currency of the Specialist Certificate (the past five years);
  - A.3.6.3. - demonstrate continued substantial involvement in the Specialty field;
  - A.3.6.4. - demonstrate satisfactory participation in continuing legal education or other forms of professional development over the past five years;
  - A.3.6.5. - be subject to the usual application, administrative and annual fees.
- A.3.7. A reapplication form, based on the above requirements, has been prepared (APPENDIX "D"). It has been recommended by the Professional Standards Department that Part 2 of the form also include the following question: "Within the past five years, have you been authorized to participate in the Practice Review Programme, or are you currently participating in same?"
- A.3.8. In the initial round of recertifications, the Board recommends that the names of applicants should not be published in the Ontario Reports and references should not be required.
- A.3.9. The Board will reserve the right of Specialty Committees to require an applicant for recertification to attend for an interview or to refer the applicant to another Specialty Committee if the Specialist's practice has changed substantially during the past five years.
- A.3.10. The Board will consider whether the recertification requirements listed above should be included in the Standards or whether more stringent recertification requirements would be more appropriate in the future.

Note: Motion, see page 241

B.  
ADMINISTRATION

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- B.1. SPECIALIST CERTIFICATION PROGRAM ANNUAL FEES - PER SPECIALTY AREA
  - B.1.1. A computer program is being prepared to identify those Specialists who owe annual fees for the coming fiscal year and include Specialist Certification Annual Fees on the Law Society's Annual Fees Notice, which is mailed in May or June annually.

B.1.2. Some Specialists have two Specialty Certificates. The Board has advised that Specialist Annual Fees should be payable per Specialty area (the dual Civil and Criminal Litigation Specialty is considered to be one area).

B.2. EDUCATION SUB-COMMITTEE

B.2.1. The original Education Sub-Committee (M.L. Pilkington, R.D. Manes, G.P. Sadvari and A. Treleaven) was established on November 22, 1991. The Sub-Committee met on December 18, 1991 and January 15, 1992 and presented its Report to the Board in late January 1992. The Report recommended that a specialist certification preparation program ultimately be developed for each specialty, consisting of (1) a program of courses which would assist lawyers to prepare for certification, and (2) examinations to test knowledge, skill and proficiency. Successful completion of courses and examinations, together with the requisite experience and concentration in the field, and compliance with standards of professional responsibility, would qualify a lawyer for certification.

B.2.2. The ten Specialty Committees met over the months of January and February 1992 to review the Education Sub-Committee's Report. A majority of Specialty Committees were of the view that the proposals of the Education Sub-Committee demanded a lot of resources and could only be achieved over the course of many years.

B.2.3. The Board recommends the expansion of the Education Sub-Committee to include John E. Claydon, David G. Price, and Garry D. Watson, all of whom have considerable expertise in legal education or specific interest in the training of lawyer Specialists.

B.2.4. The expanded Education Sub-Committee will review the recommendations of the original Education Sub-Committee and deliver to the Board an implementation plan so that preparation programs and a more objective system of assessment may become regular components of the process by which lawyers are certified as Specialists.

C.  
INFORMATION

C.1. CERTIFICATION OF SPECIALISTS

C.1.1. The Board is pleased to report the certification of the following lawyer as a Civil Litigation Specialist:

Mary Anne Sanderson (of Toronto)

C.1.2. The Board is pleased to report the certification of the following lawyers as Intellectual Property (Patent, Trade-Mark & Copyright) Law Specialists:

Roger T. Hughes (of Toronto)  
N. Malcolm S. Johnston (of Toronto)  
Gregory A. Piassetzki (of Toronto)  
Gordon J. Zimmerman (of Toronto)

23rd April, 1993

C.1.3. The Board is pleased to report the certification of the following lawyer as an Intellectual Property (Patent) Law Specialist:

Carol V.E. Hitchman (of Toronto)

C.2. PROMOTION OF THE SPECIALIST CERTIFICATION PROGRAM TO THE PROFESSION

C.2.1. A Family Law Specialist promotional booth was set up at the following program:

March 30/93: Law Society of Upper Canada - Continuing Legal Education: "Family Law a la Moge".

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April, 1993

"R. Yachetti"  
Chair

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

A-Item A.1. Brief Statement as to how the public interest would be served having access to Certified Workers' Compensation Law Specialists.

(Appendix A1 - A2)

A-Item A.1.9.1. Letter from Mr. David W. Brady, Chair, Workers' Compensation Law Specialty Committee to Ms. Sarah Thompson dated February 28, 1992 re: Report of the Education Committee Certification Board, Law Society of Upper Canada.

(Appendix B1 - B3)

A-Item A.3.3. Sample Specialist Certificate.

(Appendix C)

A-Item A.3.7. Reapplication form - Specialist Certification Program.

(Appendix D1 - D7)

It was moved by Fran Kiteley, seconded by Paul Copeland that all "Grandfathers" be required to re-qualify by the same standards as first-time applicants.

Carried

Mr. Somerville abstained from voting.

THE REPORT AS AMENDED WAS ADOPTED

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of April 8, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

23rd April, 1993

The EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of April 1993, the following persons being present: Stephen Goudge (Chair), Nora Richardson, Dean Jeff Berryman, April Burey, Bernd Christmas, Andrew Ranachan, Joanne St.Lewis, Donald Crosbie, Marilyn Bode, Mimi Hart, Ajit John and Ron Jourard.

A.  
POLICY

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No items.

B.  
ADMINISTRATION

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No items.

C.  
INFORMATION

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1. Proposed Professional Conduct Rule on Discrimination

The committee considered a number of issues in the draft of the proposed professional conduct rule on discrimination and agreed to devote a special meeting to the topic on April 19, 1993.

2. Report of Subcommittee on Access to Articles and Employment

The committee received information on focus groups held in Toronto, London and Ottawa to discuss with representatives of law firms responsible for recruiting articling students and lawyers the following matters:

- Ways of increasing the number of equity and aboriginal students selected for articles or recruited for employment within firms.
- The possible application in Ontario of the New York City model in which law firms commit to making an effort to increase the recruitment of minority students.
- The use of the Ontario government video and other material on managing diversity as a training tool to be used by law firms and others.
- The means by which more information can be provided about students so as to reduce the reliance on marks as the major criterion for employment.

It was found that the focus groups outside of Toronto had less experience with the recruitment of visible minorities and aboriginal persons and that there was a need to make students more aware of the opportunities in centres outside of Toronto. It was also noted that the firms outside of Toronto seem to be more interested in a person's commitment to the local community in assessing their suitability.

The Chair reported on the meeting with representatives from the Delos Davis Law Guild at which the purpose of the focus groups was discussed and the Guild representatives were invited to make recommendations on the procedure.

It is intended that the report of the subcommittee working on the focus groups will be put before Convocation in May.

3. Report on Minority Students Seeking Articles

In February there were eight minority students being considered for special assistance with respect to their articling either because they had not obtained a position or because they were working in a position without salary. The following is the status of these eight students:

- two have found articling positions on their own;
- two have obtained articling positions with the Attorney General's Ministry;
- one is currently being considered for a position with the Attorney General;
- one was offered a position by the Attorney General and refused it and is now seeking a position on his own;
- one was interviewed for a position and rejected because of misrepresentations about prior employment applications; and
- one student articling without pay has managed to almost complete his articles and efforts are now focusing on finding the student a summer job prior to completion of the third phase of the Bar Admission Course.

The committee discussed at length the case of a visible minority articling student whose articles were terminated for cause. It was agreed that the special assistance of the Equity Committee would continue to be offered to this student but only on the basis that any principal to whom the Equity Committee refers the student must be given a reasonable account of the circumstances that led to the student's articles being terminated by the previous principal.

4. Access to Legal Education for Foreign-Trained Lawyers

The Chair will be preparing a report on how this program might be developed in light of the advice received from government that they are not likely to be able to finance more than the initial study of the problem if that much.

5. Reorganization of Subcommittees

The proposal to combine the subcommittee working on the employment equity plan for the Law Society employees and the subcommittee working on the proposed rule of professional conduct in respect of discrimination with the subcommittee on access to articles and employment was approved by the committee.

23rd April, 1993

6. Preliminary discussions Concerning the Merging of the Women in the Legal Profession and Equity Committees

The Chair drew to the attention of the committee his preliminary discussions with the Chair of the Women in the Legal Profession Committee about the possibility of either combining the two committees or arranging to work in closer cooperation so as to avoid duplication of effort and possible inconsistent responses to mutual problems. This proposal will be considered further at later meetings.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April 1993

"S. Goudge"  
Chair

THE REPORT WAS ADOPTED

FRENCH LANGUAGE SERVICES COMMITTEE

Meeting of April 8, 1993

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 8th of April, 1993, at 11:30 a.m. The following members attended the meeting: Bencher representation: Mr. R.C. Topp (Vice Chair in the chair), Ms. K.J. Palmer (Vice Chair), Mr. Vern C. Krishna, Q.C. Staff representation: Ms. H. Harris, Ms. Christine Wackermann (Secretary).

A.  
POLICY

1. Policy regarding the Translation and Publication of Law Society Documents in French.

French Language Services and the Communications Department are cooperating to compile a complete list of documents and forms produced by the Law Society to enable your Committee to submit a set of consistent criteria for the translation and publishing of documents in French. A draft of the policy is expected to be included in the May report.

2. Designated Bilingual Position Status Report and Proposed Policy

Your Committee received a report from the Human Resources Department indicating that two additional designated bilingual positions have been filled, bringing the percentage of positions filled to 87% (from 73% in previous report).

23rd April, 1993

Your Committee would ask that consideration be given to the creation of a comprehensive Human Resources policy regarding French Language Services to ensure continuity in the development of French Language Services in the Law Society and to ensure that consistent selection criteria are in place.

C.  
INFORMATION

1. Lawyer Referral Service - French Language Skills of Bilingual Lawyers

Following approval of the changes proposed by your Committee at the meeting of March 11, 1993, the Lawyer Referral Service form will be amended and the following statements will appear in French in the next mail-out (December 1993):

A. "I hereby certify that I can communicate with clients in French, and provide legal counsel in French."

and/or

B. "I hereby certify that I can communicate with clients in French, provide legal counsel and conduct actions in French."

The meeting was adjourned at 12:05 p.m.

ALL OF WHICH is respectfully submitted

DATED this 8th day of April, 1993

"P. Peters"  
Chair

AUX MEMBRES DU CONSEIL DU BARREAU DU HAUT-CANADA

RÉUNIS EN ASSEMBLÉE

LE COMITÉ DES SERVICES EN FRANÇAIS a l'honneur de faire son rapport.

Le Comité s'est réuni le jeudi 8 avril 1993 à 11 h 30. Étaient présents, en qualité de membres du Conseil, M<sup>c</sup> R.C. Topp (vice-président assumant la présidence), M<sup>c</sup> K.J. Palmer (vice-présidente) et M<sup>c</sup> Vern C. Krishna, c.r., et, en qualité de membres du personnel, M<sup>c</sup> H. Harris et M<sup>me</sup> C. Wackermann (secrétaire).

A.  
POLITIQUE

1. Politique concernant la traduction et la publication de documents du Barreau en français

Le Bureau des services en français et le Service des communications dresseront en collaboration la liste complète des documents et formules du Barreau pour que le Comité puisse établir une série de critères généraux pour la traduction et la publication des documents en français. Une ébauche devrait accompagner le rapport du mois de mai.

2. Rapport sur les postes désignés bilingues et politique proposée

Comme l'indique le rapport du Service des ressources humaines qui a été transmis au Comité, deux postes désignés bilingues supplémentaires ont été comblés, ce qui porte le pourcentage des postes pourvus à 87 % (73 % au trimestre précédent).

Le Comité souhaiterait que l'on envisage d'élaborer une politique globale des ressources humaines sur les services en français afin d'assurer la continuité dans la mise en oeuvre des services en français au Barreau et dans l'établissement de critères de sélection généraux.

C.  
INFORMATION

Service de référence - Connaissance du français des avocates et avocats bilingues

L'approbation des changements proposés par le Comité à sa réunion du 11 mars 1993 entraînera la modification de la formule anglaise d'adhésion au Service de référence. Les déclarations suivantes figureront en français dans la nouvelle formule qui sera envoyée en décembre 1993.

A. «Je certifie par les présentes que je peux communiquer avec mes clientes et clients et leur fournir des conseils juridiques en français.»  
ou

B. «Je certifie par les présentes que je peux communiquer avec mes clientes et clients, leur fournir des conseils juridiques et les représenter en justice en français.»

La séance a été levée à 12 h 05.

FAIT le 8 avril 1993.

Le président,

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

A-Item 2. Status Report - Designated Bilingual Positions as at March 31, 1993.  
(Pages (4))

THE REPORT WAS ADOPTED

INSURANCE COMMITTEE

Meeting of April 8, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

23rd April, 1993

Your Committee met on Thursday, the 8th of April, 1993 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Hickey, Feinstein, Epstein, Howie, Cass, Wardlaw, Somerville and Ms. Elliott.

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

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ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director reported that the net cost of new claims reported during the first three months of 1993 is \$7,025,557.00 compared to \$7,658,071.00 for the same period in 1992. Though the incidence of newly reported claims is higher for the first three months of 1993, the trend towards a decrease in the overall cost of new claims continues.

The Director also reported that \$1,090,702.00 in individual member's deductibles was recovered during the first quarter of 1993 compared to \$345,819.00 for the same period in 1992. This is largely the result of the January 1993 E & O Department deductible recovery blitz designed to focus on outstanding deductibles and to increase the efficiency and effectiveness of the deductible recovery process. See Appendix "A".

2. DIRECTOR'S BUDGET RECONCILIATION REPORT

The Director reported that the total E & O department operating expenditures for the 12 month period ending December 31, 1992 are within the 1992 calendar year budgetary limitations. See Appendix "B".

3. ADVISING CLAIMANTS WITH RESPECT TO THE COMPENSATION FUND

In situations where coverage is being denied to a member, a query has arisen with respect to what information or advice, counsel and independent adjusters retained on behalf of LPIC should provide to claimants with respect to the Lawyers' Fund for Client Compensation in cases involving defalcation. Your Committee is of the view that in such cases it would be appropriate to provide the claimant with general information on the Lawyers' Fund for Client Compensation.

4. OUTSTANDING ITEMS

(a) Loss Prevention Initiative

The Director reported that the loss prevention initiative is proceeding on schedule and anticipates that project material will be available for distribution to the membership towards the end of June, 1993.



2. Investment Activity for March, 1993 - Errors and Omissions Investment Fund

<u>Purchase</u>	<u>Current Broker</u>	<u>Market</u>	<u>Cost</u>	<u>Yield</u>
\$1,000,000 7.125% BCE INC. Bonds due May 1/98	TD Bank	99.050	\$990,500	7.350%

3. Investment Activity for March, 1993 - Lawyers' Fund for Client Compensation

<u>Purchase</u>	<u>Current Broker</u>	<u>Market</u>	<u>Cost</u>	<u>Yield</u>
\$500,000 7.125% BCE INC. Bonds due May 1/98	Scotia McLeod	99.050	\$495,250	7.350%

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

Ratified

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April, 1993

"J. Wardlaw"  
Chair

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

- B-Item 1. Investment report summaries for the various Law Society Funds with supporting documentations for the months ended February 28, 1993 and March 31, 1993. (Schedules A & B)

THE REPORT WAS ADOPTED

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of April, 1993, at 11:45 a.m. the following members being present: C. Ruby (Chair), N. Finkelstein (Vice-Chair), L. Brennan, K. Howie, N. Richardson and S. Thom; D. Murphy, C. Campbell, J. Brooks, S. Hickling, R. Tinsley and H. Werry also attended.

A.  
POLICY

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1. PUBLICITY CAMPAIGN FOR  
THE LAWYERS FUND FOR CLIENT COMPENSATION

The Committee continued the discussion on the newsprint advertising proposals presented by Chiat Day, an advertising firm. This item was deferred at March Convocation to April Convocation.

Your Committee recommends that the process of drafting surveys and making copy ready advertisement presently under way should proceed to completion so the Committee will have something concrete to examine in the near future. At that time, concerns about the proposal can be discussed in a real context. This matter will be returned to Convocation before any advertisements are authorized for publication.

Item deferred

2. BUDGET PLANNING 1993/1994

The Director of Finance presented an analysis of the claims history and a projection into 1997. The total amount of outstanding claims is \$46,644,423. and with claimant limits applied the total amount is \$20,454,422. Of this amount, it is anticipated at least \$3,010,418. will be paid by other sources leaving the exposure of the Lawyers Fund for Client Compensation conservatively at approximately \$17,444,000. With the present balance in the Fund at approximately \$30,000,000., the Director of Finance is of the opinion that the Fund has an adequate financial surplus to continue at the \$1. levy for at least another year.

Your Committee recommends that there be no increase in the levy for the next fiscal year. However, the Committee is of the view that the membership should be alerted to the fact that claims have increased dramatically during the last two years and the \$1. annual levy for the Fund cannot be expected to continue indefinitely. This item was reported to March Convocation, but it could not be reached and will be discussed again at April Convocation.

Item deferred

3. CLAIMS

The Committee discussed certain particular claims.

4. FEDERATION OF LAW SOCIETIES INTER-JURISDICTIONAL COMMITTEE  
PROPOSAL REGARDING CLIENT COMPENSATION

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The Committee reviewed a preliminary proposal of the Federation of Law Societies for compensating victims residing outside the province for the dishonest conduct by members practising law in Canada but outside their "home" province. The Committee members were asked to address any concerns they might have about the proposal to the Secretary. The Committee decided that the proposals were worth further consideration and asked the Secretary to explore the matter further to determine what particular proposal might be worked out, and returned to the Committee for further consideration.

B.  
ADMINISTRATION

No items

C.  
INFORMATION

1. REFEREE REPORTS AND AN ASSISTANT SECRETARY'S MEMOS

The Referee Reports and Assistant Secretary's Memos that were approved by the Review Sub-Committee were before the Committee for information purposes only with the grants to be paid from the Fund shown on Schedule "A" of this report.

2. A copy of the Financial Summary as of February 1993 and graphs showing claims made and grants paid are attached. (Pgs. C1 - C4)

3. Accounts approved by Assistant Secretaries in February amounted to \$22,826.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April, 1993

"C. Ruby"  
Chair

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

C-Item 1 Referee Reports and Assistant Secretary's Memos. (Schedule "A")

C-Item 2 Financial Summary as of February 1993. (Marked C1 -C4)

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

LEGAL AID COMMITTEE

Meeting of April 8, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of April, 1993, at two-thirty o'clock in the afternoon, the following members being present: Frances P. Kiteley, Chair, Messrs. Ally, Brennan, Bond, Ms. Campbell, Ms. Cohen, Mr. Durno, Ms. Fuerst, Messrs. Lalande and Panico.

A.  
POLICY

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1.(a) RESPONSE TO THE RECOMMENDATIONS  
IN THE ABT REPORT

At its meetings in October, 1991, January, February, March, and April, 1992, the Legal Aid Committee reviewed the Abt Report. Following that review, the Provincial Director prepared a summary of responses to the recommendations made in the Abt Report. At the meeting in April, the Legal Aid Committee reviewed the draft responses prepared by the Provincial Director.

It was moved by Mr. Bond and seconded by Mr. Lalande that the responses to the recommendations be approved: but that a preamble should be added to convey that the Legal Aid Committee considered the Abt Report (and in particular Chapter 6) to be inaccurate and based upon inadequate and outdated data.

(b) THE ROLE OF THE LEGAL AID COMMITTEE

As reported to Convocation in March, the Legal Aid Committee will examine its role, its relationship with Convocation and its goals. Laura Nashman, OLAP's Human Resources Manager will assist in this regard by determining what resources are available to assist the Committee. It was estimated that between \$15,000 and \$20,000 may be required to retain consultants to assist the Committee in its deliberations. It was moved by Mr. Bond and seconded by Ms. Campbell that this amount be approved. The Motion was carried with one member abstaining from the vote.

Item deferred

(c) UPDATE ON FAMILY LAW PILOT PROJECTS

The Deputy Director, Legal reported that the Design Committee is continuing to meet regularly, that he and the Co-Chair of the Committee had attended in Ottawa to meet with representatives of shelters, members of the Ottawa Bar and some "survivors of the legal system", since interest had been expressed there in a Family Law Pilot Project. The meeting had been lively and productive. At this time the Deputy Director was unable to estimate when the work of the Design Committee may be completed.

(d) UPDATE ON REFUGEE LAW PILOT PROJECTS

The Deputy Director, Appeals advised that a Refugee Law Pilot Project Sub-Committee had met on two occasions, the meetings were continuing and some tentative conclusions had been reached. The next meeting of the Sub-Committee will be held on April 22nd.

(e) UPDATE ON APPOINTMENTS SUB-COMMITTEE

A small Sub-Committee has been struck to bring forward recommendations for the approval of the Legal Aid Committee about how the process for appointments of the members of the Legal Aid Committee. The Sub-Committee has met on two occasions and their work is continuing.

(f) STUDENT LEGAL AID SOCIETIES

The Report of the Student Legal Aid Societies which was referred back to the Legal Aid Committee by Convocation in January of this year was discussed once again by the Committee. It was decided that the Chair of that Sub-Committee would consider what amendments would be appropriate to the Report and bring it back to the Legal Aid Committee in May.

B.  
ADMINISTRATION

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1.(a) REPORT OF THE DEPUTY DIRECTOR, FINANCE  
FOR THE ELEVEN MONTHS ENDED FEBRUARY 28, 1993

The Report of the Deputy Director, Finance for the Eleven Months Ended February 28, 1993 was presented to the Committee by the Provincial Director and is attached hereto and marked as SCHEDULE (A). He advised that the Plan is still operating in the 1992/93 fiscal year and will probably close off the books approximately April 19th.

He advised that the Plan is undergoing a Value for Money Audit by the Provincial Auditor. This process had begun just prior to Christmas of 1992 with the auditors looking at two particular areas (1) the Post Payment Audit which studies what steps OLAP takes after a solicitor is paid to ensure that the monies were properly paid and (2) the financial eligibility aspect of OLAP i.e. are there people who are being granted Legal Aid who are financially ineligible and are there people who were financially eligible for Legal Aid and did not receive same? The auditors visited some area offices and sent a survey to all of the Plan's Area Directors. It is expected that the final report will be available by June or July of this year.

(b) REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS  
FOR THE MONTH OF MARCH, 1993

The Legal Aid Committee received the Report on the Payment of Solicitors Accounts for the month of February, 1993 which is attached hereto and marked as SCHEDULE (B).

(c) REPORT ON THE STATUS OF REVIEWS IN THE LEGAL  
ACCOUNTS DEPARTMENT FOR THE MONTH OF MARCH, 1993

The Legal Aid Committee received the Report on the Status of Reviews in the Legal Accounts Department for the month of March, 1993 which is attached hereto and marked as SCHEDULE (C).

(d) AREA COMMITTEES - APPOINTMENT

APPOINTMENT

Durham

Sharon A. Babbs, Professor of Business

C.  
INFORMATION

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1. The Legal Aid Committee received the Annual Report (1991-92) of the Nishnawbe-Aski Legal Services Corporation.

ALL OF WHICH is respectfully submitted

"F. Kiteley"  
Chair

April 8, 1993

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

- B-Item 1.(a) Report of the Deputy Director, Finance for the Eleven Months Ended February 28, 1993. (Schedule (A), Pages (2))
- B-Item 1.(b) Report on the Payment of Solicitors Accounts for the month of February 1993. (Schedule (B), Pages (2))
- B-Item 1.(c) Report on the Status of Reviews for the month of March, 1993. (Schedule (C))

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

LEGAL EDUCATION COMMITTEE

Meeting of April 8, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Thursday, the 8th of April, 1993, at 10:30 a.m.

The following members were in attendance: Paul Lamek (Chair), Donald Lamont (Vice-chair), Dean Jeffrey Berryman (representing the law schools), Lloyd Brennan, Susan Elliott, Stephen Goudge, Casey Hill, Vern Krishna, Colin McKinnon, Ross Murray, Louis Radomsky (non-Bencher member), Marc Somerville and Roger Yachetti. Bencher Neil Finkelstein also attended. Staff in attendance were: Marilyn Bode, Brenda Duncan, Holly Harris, Mimi Hart, Alexandra Rookes, and Alan Treleaven.

A.  
POLICY

No items to report this month.

B.  
ADMINISTRATION

No items to report this month.

C.  
INFORMATION

C.1 NEW CONTINUING LEGAL EDUCATION SUBCOMMITTEE CHAIR

C.1.1 The Legal Education Committee is pleased to announce the appointment of Susan Elliott as Chair of the Continuing Legal Education Subcommittee.

C.1.2 The former Chair of the Continuing Legal Education Subcommittee, Colin McKinnon, will see through to its conclusion the process of providing a report on Mandatory Continuing Legal Education.

C.2 HOLLY HARRIS

C.2.1 Holly Harris will be leaving her post as Ottawa Regional Director of Education on June 18, 1993, on completion of her five year term under the Government of Canada Executive Interchange Program. During her time at the Law Society Ms. Harris has successfully overseen the significant expansion of Bar Admission Course French language programming in Ottawa and the transition from the traditional to the reformed Bar Admission Course. Holly has also been instrumental in promoting Ottawa based and designed Ottawa continuing legal education programming.

C.2.2 The recruitment of a new Ottawa Regional Director of Education is now in progress.

C.3 BAR ADMISSION COURSE FINANCIAL ISSUES SUBCOMMITTEE

C.3.1 The Bar Admission Course Financial Issues Subcommittee held its sixth meeting on March 12 and its seventh meeting on April 7.

C.3.2 The Subcommittee is continuing to explore whether there are alternatives to the current Spence model which would generate substantial savings while fulfilling the Law Society's educational mandate. The Subcommittee will, in this context, also be analyzing proposals and developments elsewhere in Canada, in the United Kingdom, and in the United States.

C.3.3 The next meeting of the Subcommittee will take place at 4:00 p.m. on Wednesday, May 12, 1993 in Osgoode Hall.

C.4 SPECIAL SUBCOMMITTEE ON ARTICLING RECRUITMENT

C.4.1 The Special Subcommittee on Articling Recruitment met on Tuesday, March 16. The following members were in attendance: Philip Epstein (Chair), Dan Goldberg, Michele McCarthy, James Musgrove, Bill Parker, and Connie Reeve. Also in attendance were: Elliott Peranson (President of National Matching Services) and the following members of staff: Marilyn Bode, Mimi Hart and Alan Treleven.

C.4.2 The discussions of the Subcommittee focused on the following issues:

- 1) The effectiveness of the Matching Program given the pattern of modest decline in the number of firms in the program.
- 2) Whether reasonable steps can be taken to increase the number of firms participating in the match.
- 3) How to fairly balance the interests of the students and firms that are in and out of the matching program.
- 4) Student concerns about law firm pressures and possible violation of the approved recruitment procedures.

C.4.3 The next meeting of the Subcommittee will include greater representation by firms not in the match.

C.5 BAR ADMISSION COURSE SECTION HEADS AND LEGAL EDUCATION COMMITTEE ANNUAL MEETING AND DINNER

C.5.1 The annual meeting and dinner of the Legal Education Committee and Bar Admission Course Section Heads, including Senior Instructors from London and Ottawa, will take place on Thursday, June 10. The meeting will begin in Convocation Room at 4:00 p.m., with dinner to follow at 7:00 p.m.

C.5.2 The meeting is being held to discuss current and future directions for the Bar Admission Course. The dinner is being held to thank the Section Heads and Senior Instructors for their generous contribution to the Bar Admission Course.

C.5.3 All members of the Legal Education Committee are encouraged to attend, and are asked to confirm whether they will attend with Alexandra Rookes at 416-947-3414 as soon as reasonably possible.

C.6 JOINT SUB-COMMITTEE ON SEXUAL HARASSMENT REPORT

C.6.1 The Legal Education Committee has reviewed the draft "Report of the Joint Sub-Committee on Sexual Harassment" in consultation with the Joint Sub-Committee on Sexual Harassment, the Articling Subcommittee, the Discipline Policy Committee, and the Women in the Legal Profession Committee. The Legal Education Committee has approved a revised draft of the report for presentation to Convocation by the Joint Sub-Committee on Sexual Harassment.

C.7 ARTICLING SUBCOMMITTEE

C.7.1 The Subcommittee met at 8:00 a.m. on March 26, 1993. In attendance were Marc Somerville (Chair), Jay Rudolph and Janne Burton. Staff members attending were Marilyn Bode, Deborah Brown, Barbara Dickie and Mimi Hart.

C.7.2 The Subcommittee gave conditional approval to a further 39 applications from prospective articling principals for the 1992/93 articling year. To date, approximately 1280 members of the profession have applied. The Subcommittee also gave conditional approval to an additional 100 applications from prospective articling principals for the 1993/94 year.

C.7.3 The Subcommittee considered an application for principal approval for the 1993/93 articling year which had been deferred from its February 1993 meeting. The member was called to the bar for less than one year. The Subcommittee denied the member's application.

C.7.4 The Subcommittee also reconsidered two applications of members who had been approved for the 1992/93 articling year, subject to the submission of quarterly progress reports. In one case, the member recently withdrew from the Peer Review Program. Both members were granted approval for the 1993/94 year subject to the submission of quarterly progress reports.

- C.7.5 The Subcommittee also considered the application of a member for the 1992/93 articling term. The member did not have a significant negative history with the Law Society. However, the firm with which he has recently become an associate has a significant negative history with the Law Society. After some discussion, the Subcommittee granted the member approval to serve as an articling principal, on the condition that only this member supervise the articling student's work. The other members of the firm were, of course, free to give work assignments to the articling student. However, only the approved principal may supervise the student.
- C.7.6 The appeal of an abridgment application from the decision of the Articling Director was considered. The applicant had been granted an abridgment to four months and an exemption from Phase One by the Articling Director. The applicant appealed, requesting a waiver of the articling requirement. The applicant has 10 1/2 years practice experience in Hong Kong. The Subcommittee allowed the appeal.
- C.7.7 The Subcommittee considered two policy matters. The first matter related to the Rights of Appearance of articling students issue. Two items were discussed with respect to this issue. There is currently a distinction in practice for students inside and outside Metropolitan Toronto on simple contested interlocutory matters. The issue is that some judges in Metropolitan Toronto will not hear from anyone who is not gowned. Marc Somerville advised that the Treasurer and he will be meeting with the Chief Justice to discuss the issue.
- C.7.8 The second item was a letter which had been received from a member in Timmins, Ontario. He attended to conduct the examination for discovery of the opposing party. The member brought the firm's articling student along to the discovery. Opposing counsel objected to the student's presence. The member brought a motion to request the court's permission to have the articling student present. The motion was denied. The member has suggested that the Law Society consider appealing the order. The Chair of the Articling Subcommittee will take this matter up with the Treasurer and the Chief Justice in their meeting.
- C.7.9 The second policy matter related to the termination of an articling student in the 1992/93 articling year. The student had exhibited severe stress and had seriously disrupted the staff and client meetings in the office for a period of 1 1/2 weeks prior to the termination. The Articling Director and Barbara Dickie of her staff had numerous telephone conversations and a meeting with the firm prior to the termination decision. Staff have also met with the articling student on numerous occasions, including prior to and subsequent to the termination. It was suggested that the student defer articles until the 1993/94 articling term.
- C.7.10 The student has insisted since the termination that she is ready and able to article. The Subcommittee considered that section 35 hearings under the Law Society Act do not apply to student members. The Subcommittee concluded that the Law Society appears to have no current legislative authority to prevent a student from continuing to article. The Subcommittee will consider this matter further at future meetings(s) and will bring a recommendation forward to the Legal Education Committee.

23rd April, 1993

- C.7.11 The Subcommittee received an update from Mimi Hart on the placement of articling students issue. The Subcommittee was advised of the first meeting of the Special Subcommittee on Articling Recruitment chaired by Philip Epstein. The Articling Subcommittee was further advised of the work underway to consider what type of questions are inappropriate in an articling interview context, and the work of the Equity Committee as it affects articling students.
- C.8 REQUEST FOR PERMISSION TO WRITE FOUR SUPPLEMENTAL EXAMINATIONS
- C.8.1 A student failed Phase Three of the Bar Admission Course, having failed four of the examinations. Pursuant to section 4.1 (c) of the Requirements for Standing, the student's grade in each of the examinations, including each examination part, is the final grade: "...the grade in any Examination or Examination part is the final grade. There is no appeal. No oral or written review is available."
- C.8.2 Pursuant to section 4.6 of the Requirements for Standing, the student is ineligible for supplemental examinations because of having failed four examinations: "A student is entitled to complete a combined total of no more than three Supplemental and Special Examinations...the student will be required to withdraw immediately without being permitted to complete further Examinations, including Supplemental or Special Examinations...".
- C.8.3 The Legal Education Committee, at its meeting of January 14, 1993, considered the cases of four students who on compassionate grounds requested permission to be exempt from the effect of section 4.6 of the Requirements for Standing and to be able to write four supplemental examinations. The Legal Education Committee determined that it would not create an exception in those four cases.
- C.8.4 The student provided a letter in which the Legal Education Committee was asked for relief from failure of Phase Three of the Bar Admission Course.
- C.8.5 The Legal Education Committee denied the request, and confirmed that the student must repeat Phase Three in its entirety.
- C.9 CONTINUING LEGAL EDUCATION REPORT ON COURSES
- The Report is attached. (Pages 1 - 2.)
- C.10 SPECIAL LECTURES, 1993
- C.10.1 The Committee authorized the staff to proceed with developing a program in family law for the 1993 Special Lectures.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April, 1993

"P. Lamek"  
Chair

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

C-Item C.9 Report on Courses - Continuing Legal Education.

(Pages 1 - 2)

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE

Meeting of April 8, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of April, 1992, at 9:00 a.m., the following members being present:

D. Murphy, (Chair), R Topp (Vice-Chair), M. Cullity, G. Farquharson, A. Feinstein, K. Golish, M. Hennessy, M. Hickey, R. Lalande, B. Pepper, M. Weaver. G. Howell also attended.

A.  
POLICY

1. Ontario Reports - Reporting of Supreme Court of Canada cases

The policy of the Editorial Board for the Ontario Reports is to note only the result of appeals to the Supreme Court of Canada (SCC) from decisions of the Ontario Court of Appeal reported in the OR's. The only exception to this rule has been the reporting of the Askov decision from the SCC two years ago. The Committee reviewed several possibilities with regard to noting, digesting, or reporting SCC decisions in the OR's, and authorized the Chair (D.J. Murphy) and Chief Librarian (G. Howell) to meet with two parties in order to discuss these possibilities:

- a) the Butterworth editorial board for the Ontario Reports, and
- b) officials at the Supreme Court of Canada involved in the dissemination and reporting of SCC cases.

2. Ontario Reports - Reporting of cases with lengthy reasons for judgment

The Committee has had several discussions over the past two years with the OR Editorial Board regarding the selection and reporting of cases (especially trial court cases) containing lengthy reasons for judgment. The Committee expressed concern that, at least in one recent instance, an 85-page decision had not been abridged (as authorized by editorial board policy). The Committee instructed the Chief Librarian to inquire of the OR Editorial Board as to why the abridgment policy seemingly is not being implemented, and generally as to the selection of cases with lengthy reasons for judgment for reporting in the Ontario Reports.

B.

ADMINISTRATION

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1. County Libraries - Issues arising from a meeting of the County & District Law Presidents' Association (CDLPA) Library Committee

The Committee had before it two pages of Resolutions as well as the Agenda and supporting material from the meeting held the previous day of the CDLPA Library Committee. The main resolution (the first of four) concerned the CDLPA Library Committee's recommendation to have the Law Society's county library levy (within the Annual Practice Fee) raised by \$5.

The Libraries & Reporting Committee fully debated the CDLPA Library Committee resolution, and its focus on covering increased inflationary costs for 1994. The Committee decided to recommend to Convocation that the county library levy not be raised to cover increased costs. The resolutions of the CDLPA Library Committee are attached for information.

[At the subsequent Finance Committee meeting, the matter of a \$2 increase in the county library levy was discussed. The basis for such a levy increase was that the additional revenue raised therefrom would be retained by the Law Society as a further reserve for future years when Law Foundation funding of county libraries might drop.]

2. Great Library - Evening and Weekend service

The report of Theresa Roth (Head of Reference Services), recommending that the present hours of service be maintained, was received.

3. Ontario Reports - Reported case involving barrister - Trial judge subsequently overturning

The Committee had before it ten pages of material regarding a reported case in the Ontario Reports which documented the removal of a barrister from the record, a decision subsequently overturned by the trial judge, Mr. Justice McRae. [The decisions of the Court of Appeal and Mr. Justice O'Driscoll in the case of R. v. Adamson are reported at 3 O.R. (3d), pages 272 and 275 respectively, improperly indexed as R. v. Kerzner.]

The Chief Librarian advised that the Ontario Reports Editorial Board was meeting later that afternoon, and that Paul Perell and Jane Arnup (both members of the editorial board) had conveyed messages that the Editorial Board would be deciding whether to publish Mr. Justice McRae's endorsement as requested by Mr. Kerzner and his counsel, as well as noting the error in the style of cause. On the assumption that all parties would be satisfied with the above resolution, the Committee decided to take no action on this matter.

4. Ontario Reports - Listing of Judges - Small Claims Court Judges

His Honour Judge T.C. Tierney of the Ontario Court of Justice, Ottawa Small Claims Court, had written to the Treasurer asking that the eight (8) Provincial Judges presiding in Small Claims Courts in Ontario be added to the List of Judges

23rd April, 1993

in the bound volumes of the Ontario Reports. The March 17th letter of Judge Tierney and the April 2nd letter of Mr. Rock were before the Committee. The Committee recommends that the Small Claims Court Judges be added to the list in the Ontario Reports.

ALL OF WHICH is respectfully submitted

Dated this 23th day of April, 1993

"D. Murphy"  
Chair

THE REPORT WAS ADOPTED

MARCH CONVOCATION MINUTES

Draft Minutes of March 25 and 26, 1993

Approved

(see draft Minutes in Convocation file)

SPECIAL COMMITTEE ON RELIEF AND ASSISTANCE (in camera)

**IN CAMERA Content Has Been Removed**

IN CAMERA Content Has Been Removed

RESEARCH AND PLANNING COMMITTEE

Meeting of April 8, 1993

The Report of the Research and Planning Committee was deferred to the May Convocation.

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of April 8, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of April, 1993 at 10:30 a.m., the following members were present: N. Finkelstein (Acting Chair), M. Hickey (Acting Chair), R. Cass, G. Farquharson, N. Graham and M. Weaver. Also in attendance was: A. John.

B  
ADMINISTRATION

1. COMPLAINTS/INVESTIGATIONS

Six new investigations were authorized.

23rd April, 1993

2. TRIPARTITE COMMITTEE

The Law Society's response to the Ianni Task Force on Paralegals June 1992, recommended that the Attorney-General establish a Tripartite Committee to determine the parameters of paralegal practice. The members of the Committee were to be drawn from paralegal organizations, the office of the Attorney General and from the Law Society. At the end of March 1993, the Treasurer met with the Attorney General, who indicated support for the establishment of the Tripartite Committee. Your Committee recommends that there be representation from the Law Society on any such committee.

Note: Item deferred

3. THE REPORT OF WORK ON THE SUBCOMMITTEE TO REVISE RULE 19

The Subcommittee appointed to prepare the revision of Rule 19 met on two occasions in March 1993 and prepared a draft which was considered and amended by your Committee. It will be send to the Special Committee to preview the Rules of Professional Conduct by April 30, 1993.

ALL OF WHICH is respectfully submitted

DATED the 23rd of April, 1993

"D. O'Connor"  
Chair

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

List of Current Prosecutions.

THE REPORT WITH THE EXCEPTION OF ITEM B-2. WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of April 8, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 8th of April 1993 at 11:30 a.m., the following members being present: S. Elliott (Chair), M. Cullity, S. Goudge, F. Mohideen and J. Monaghan.

Also present: C. Ateah, J. Herbert and S. Hodgett.

A.  
POLICY

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A.1.           REPORT OF THE JOINT SUB-COMMITTEE ON SEXUAL HARASSMENT

- A.1.1.       Your Committee considered this matter at its March meeting. Convocation postponed consideration of the matter until the April Convocation.
- A.1.2.       Your Committee had before it the Report of the Joint Sub-Committee on Sexual Harassment. This Sub-Committee is made up of representatives of the Discipline Policy Committee, the Legal Education Committee and the Women in the Legal Profession Committee.
- A.1.3.       Ms. J. Lax presented the Report to the Committee. After discussion, the Committee concluded that the Report is an appropriate response to this difficult issue.
- A.1.4.       Your Committee recommends that the Report of the Joint Sub-committee on Sexual Harassment be adopted.

B.  
ADMINISTRATION

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No matters to report.

C.  
INFORMATION

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C.1.           QUESTIONNAIRE CONCERNING THE MODEL SEXUAL HARASSMENT POLICY

- C.1.1.       In January 1992, Convocation adopted *A Recommended Personnel Policy Regarding Employment-Related Sexual Harassment*. The policy was distributed to all law firms in Ontario. The Law Society has continued to receive requests for the policy from members of the profession. In its November report to Convocation, the Committee outlined plans for a review of the policy by circulating a questionnaire to law firms in Ontario to measure the policy's success.
- C.1.2.       The Committee approved the final version of the questionnaire to be sent to law firms. It is hoped that the questionnaire can be sent and the results received in time for the Committee to report to Convocation regarding the results before the end of the current Committee year.

C.2. ARTICLE IN THE LAW TIMES

C.2.1. Your Committee considered a commentary piece which appeared in the April 5 edition of the *Law Times*. In that piece a student outlined inappropriate comments made by lawyer during an articling interview. The student made a number of suggestions for action by the Law Society. The Committee decided that it would be worthwhile for the Law Society to respond to the letter in order to outline measures which have been taken and measures which are currently planned to deal with such conduct. The primary aim of the letter is to educate students and the profession, and to make it clear that the Society views harassment of articling students as a serious matter.

C.3. PRELIMINARY DISCUSSIONS CONCERNING MERGING THE WOMEN IN THE LEGAL PROFESSION COMMITTEE AND THE EQUITY COMMITTEE

C.3.1. The Committee held preliminary discussions as to whether it would be beneficial to merge the Women in the Legal Profession Committee with the Equity Committee. The two Committees have dealt with a number of issues which may overlap. Equity in the workplace may not divide easily between issues concerning women and issues concerning race, culture and disability. On the other hand, there may be value in preserving two separate Committees because the issues, while overlapping, are not always identical.

C.3.2. The Committee resolved to discuss this matter further. The Committee supported the proposition that it would be worthwhile to have greater communication with the Equity Committee, but it was not clear that a merging of the two Committees would be the correct course of action at this time.

C.4. OTHER MATTERS

C.4.1. The Chair and Stephen Goudge reported to the Committee that they attended a workshop for representatives of law schools and law societies organized by the CBA Task Force on Gender Equality.

C.4.2. The Committee considered a request for funding from a legal organization for a program dealing with gender issues. The Committee resolved not to grant this request.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April 1993

"S. Elliott"  
Chair

THE REPORT WAS ADOPTED

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23rd April, 1993

CONVOCATION ROSE AT 5:30 P.M.

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Confirmed in Convocation this      day of                      , 1993

Treasurer