

MINUTES OF CONVOCATION

Friday, 27th January, 1995
9:30 a.m.

PRESENT:

The Treasurer (Paul S. A. Lamek), Bastedo, Blue, Bellamy, Bragagnolo, Brennan, Campbell, R. Cass, Copeland, Cullity, Curtis, Epstein, Farquharson, Feinstein, Finkelstein, Goudge, Graham, Hickey, Howie, Jarvis, Kiteley, Krishna, Lamont, Lawrence, Lax, Legge, McKinnon, Manes, Moliner, Murphy, Murray, O'Brien, D. O'Connor, Palmer, Pepper, Peters, Richardson, Ruby, Scace, Sealy, Somerville, Strosberg, Thom, Topp, Weaver and Yachetti.

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The Reporter was sworn.

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IN PUBLIC

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AGENDA - Committee Reports to be taken as read (except those Items requiring separate debate and approval by Convocation)

It was moved by Mr. Feinstein, seconded by Mr. Lamont THAT the Reports listed in paragraph 4 of the Agenda (Reports to be taken as read) be adopted except for the Report of the Legislation and Rules Committee which was added to category 6.

Carried

- Admissions and Membership
- Board of Lawyers Professional Indemnity Company
- County & District Liaison
- Discipline Policy
- Draft Minutes - November 1994
- Equity in Legal Education and Practice
- Finance and Administration
- Investment
- Legal Aid
- Legal Education
- Professional Conduct
- Professional Standards
- Research and Planning
- Specialist Certification Board
- Unauthorized Practice
- Women in the Legal Profession

COMMITTEE REPORTS

ADMISSIONS AND MEMBERSHIP COMMITTEE

Meeting of January 12, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS AND MEMBERSHIP COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of January, 1995 at 9.30 a.m., the following members being present: Mr. Campbell (Chair), Ms. M. Moliner, Ms. M. Weaver, and Messrs. D. Lamont and G. Farquharson.

Also present: R. Tinsley, M. Angevine, C. Shaw, P. Gyulay.

A.
POLICY

A.1. FOREIGN LEGAL CONSULTANT - RESIDENCY REQUIREMENT

- A.1.1. The Society has received a letter from an American law firm seeking to apply for Foreign Legal Consultant certification for three attorneys.
- A.1.2. The law firm consists of two partners and a part-time associate and currently has offices in Buffalo and Rochester. The letter states that the firm has recently seen a significant increase in the number of Canadian clients, partially due to the passage of NAFTA. As a convenience to those clients the firm would like to open an office in Toronto and to have one or two attorneys located at the office one or two days a week.
- A.1.3. The letter further states that the law firm is limited to the practice of U.S. Immigration and Nationality Law including labor certification, non-immigrant visas, visa processing, consular practice, family unification, vehicle seizures, deportation and exclusion hearings, and U.S. customs law.
- A.1.4. Law Society policy with respect to the licensing of Foreign Legal Consultants requires that applicants obtain permanent resident status in Ontario.
- A.1.5. The applicant law firm submits that it does not have the manpower or the clientele to permanently station an attorney in Toronto and requests a waiver of the residency requirement.

Your Committee discussed the issue and concluded that it required further study. It further concluded that Convocation should be advised that the matter is under consideration and Benchers invited to communicate their views to the Chair.

B.
ADMINISTRATION

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

- B.1.1. Davies Bagambiire applied to transfer under sec. 4(1) of Regulation 708. Your Committee considered Mr. Bagambiire's application at its meetings on June 23, 1994 and August 11, 1994 and requested that the applicant provide further information with respect to his practice experience, in support of his application.

On review of the additional information your Committee has concluded that Mr. Bagambiire has met the practice experience requirement set out in s. 4(1) of Reg. 708 and accordingly is eligible to proceed by way of transfer.

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

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

Teresa Maioni
Annette Pereira
Brahm Segal
Catherine Tyndale

Approved

B.3. CALL TO THE BAR AND CERTIFICATE OF FITNESS

Bar Admission Course

- B.3.1. The following candidate having successfully completed the 35th Bar Admission Course 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 January 27th, 1995:

Kinga Katalin Sugar

- B.3.2. The following candidate having successfully completed the 36th Bar Admission Course 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 January 27th, 1995:

Daniel Philippe Bourque

Approved

27th January, 1995

B.4. APPLICATION TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

- B.4.1. David M. Santoni has applied to be licensed as a foreign legal consultant in the Toronto office of Skadden Arps.

Mr. Santoni was called to the Bar of the State of Ohio on November 18, 1991. In his application Mr. Santoni states that he was employed by the firm of Thompson, Hine and Flory in Cleveland from September 3, 1991 to April 22, 1994 and by the firm of Skadden Arps from May 2, 1994 until the present.

Mr. Santoni's application is complete and both he and the firm have filed all necessary undertakings.

Approved

B.5. REINSTATEMENT FOLLOWING SUSPENSION

- B.5.1. Patrick Griffin was called to the Bar March 22, 1974. He was suspended for non-payment of the annual fee March 2, 1981. Mr. Griffin now seeks reinstatement to membership in good standing and to return to the practice of Ontario law.

- B.5.2. In his letter to the Society dated December 14, 1994 Mr. Griffin sets out his practice experience as a member of the British Columbia Bar and his work in legal education with the Canadian Bar Association, Nova Scotia, and the Continuing Legal Education Society of Nova Scotia.

Your Committee recommends that the applicant be required to write the requalification examinations.

- B.5.3. John Wilson was called to the Bar April 1, 1980. He was suspended November 27, 1987 for non-payment of the E & O levy. Mr. Wilson now seeks reinstatement to membership in good standing.

- B.5.4. In his letter to the Society dated November 28, 1994 Mr. Wilson states that he has encountered difficulties in his business activities because of his status as a suspended lawyer. He is not intending to enter the private practice of law and is seeking to be reinstated to the non-practising category.

Your Committee recommends that the applicant be reinstated to a non-practising membership category conditional on his signing an undertaking that he will not engage in the practice of Ontario law without first obtaining the Society's permission and, in the Society's discretion, completing the its requirements for requalification at that time.

- B.5.5. Michael Dale was called to the Bar May 14, 1981. He was suspended February 25, 1983 for non-payment of the annual fee. Mr. Dale seeks to be reinstated to membership in good standing.

27th January, 1995

B.5.6. In his letter to the Society dated November 21, 1994 Mr. Dale sets out his practice experience as a member of both the Yukon and British Columbia Bars and his practise as a Crown Prosecutor with the Federal Department of Justice in the Northwest Territories.

B.5.7. Mr. Dale plans to continue his employment with the Federal Department of Justice as a Federal Crown Prosecutor in Ontario.

Your Committee recommends that the applicant be relieved of the requirement of completing requalification examinations.

B.6. REQUALIFICATION FOLLOWING SUSPENSION

Andrew Grant McQuilkin

B.6.1. At its November 10, 1994 meeting the Committee recommended that this matter be referred to the panel which originally heard Mr. McQuilkin's application for termination of suspension on January 21, 1994.

B.6.2. The Committee consisting of Ms. Kiteley (Chair), Ms. Bellamy and Mrs. Legge was reconvened to hear the matter on November 30, 1994.

B.6.3. The Report of the Committee is at Attachment A.

Your Committee recommends that the Report be adopted.

B.7. MEMBERSHIP UNDER RULE 50

B.7.1. 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 memberships in the Society without payment of annual fees:

Ernest Abel Benevides	Toronto
Jean Gabriel Castel	Orangeville
James Forrester	Bramalea
Jack Allan Gilbert	Toronto
Thomas George Gorrie	Don Mills
John Selby Herron	Toronto
Richard Estcourt Holland	Toronto
Jack Alfred Seed	Toronto
Charles Fremont Scott	Ottawa
Matthew Sheard	Bolton
Donald Clayton Sim	Nepean
Gerard Joseph Cecil van Berkel	Ottawa
Jessen Dewolfe Wentzell	Ottawa

Approved

Note: Name of Gerard Joseph Cecil van Berkel deleted

B.7.2. Incapacitated Members

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

Frank Austin	Toronto
Richard William Snell	Mitchell

Approved

B.7.3. Termination of Rule 50

The following member retired under Rule 50 on September 24, 1993. He now requests permission to have his retirement terminated, as he wishes to return to active practice.

William Joseph Anderson	Toronto
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Approved

B.8. RESIGNATION - REGULATION 12

B.8.1. The following members have applied for permission to resign their membership in the Society and have submitted Declarations/Affidavits in support. These members have requested that they be relieved of publication in the Ontario Reports.

Geoffrey George Robinson	Richmond Hill
Paul Charles Caston	Toronto
D'Arcy Graham Luxton	Arthur
Motria Sophia Oksana Ilnyckyj-Reive	Ottawa
Samuel David Clarke	Etobicoke
Robert Wilson Black	California

Approved

C.
INFORMATION

C.1. CHANGES OF NAME

<u>From</u>	<u>To</u>
Luisa Emilia Addolorata <u>Dirienzo</u>	Luisa Emilia Addolorata <u>Rinaldi</u> (Marriage Certificate)
Samantha <u>Glowacki</u>	Samantha Glowacki <u>Horn</u> (Marriage Certificate)
Patricia Giuseppina Consolata <u>Goduto</u>	Patricia Giuseppina Consolata <u>Caza</u>

27th January, 1995

	(Marriage Certificate)
Laura Elizabeth <u>Howard</u>	Laura Elizabeth <u>Eplett</u> (Marriage Certificate)
Ruth Sabine <u>Ozols</u>	Ruth Sabine <u>Barr</u> (Marriage Certificate)
Almeda Margaret Anna <u>Sender</u>	Almeda Margaret Anna <u>Wallbridge</u> (Marriage Certificate)
Susan <u>Wong</u>	Susan <u>Wong-Quon</u> (Change of Name Certificate)

Noted

C.2. ROLLS AND RECORDS

C.2.1. (a) Deaths

The following members have died:

Harpin Beaumont Prescott	Called October 20, 1927 Died September 19, 1993
Sandra Lynn Sergenese Calgary, AB	Called March 30, 1990 Died June 7, 1994
Roland Cyril Tanner Mississauga	Called June 27, 1957 Died September 1, 1994
Peter Robert John Noble London	Called March 23, 1973 Died September 7, 1994
William Carroll Grant Peterborough	Called June 18, 1936 Died September 10, 1994
John Llewelyn Jones Edwards Windsor	Called March 19, 1971 Died September 19, 1994
Thomas Phillip Mitchell Chatham	Called September 28, 1950 Died October 6, 1994
John Carleton Wade Ottawa	Called March 19, 1970 Died October 15, 1994
William Douglas Miller Yellowknife, NT	Called March 22, 1974 Died October 21, 1994
Gustave John Monette London	Called April 10, 1980 Died October 26, 1994
Alfred William Rubens Penetanguishene	Called March 24, 1972 Died October 27, 1994
Frederick Barth Sudbury	Called March 21, 1969 Died November 1, 1994

Gordon Craig Thomas Toronto	Called April 11, 1980 Died November 5, 1994
Lawrence Sun Wong North York	Called April 6, 1983 Died November 11, 1994
James Miller Beatty Toronto	Called June 29, 1950 Died November 12, 1994
Paul Norman Lannon Burlington	Called March 24, 1972 Died November 22, 1994
Michael Roy Geoffrey Best Hyde Park	Called April 14, 1980 Died November 24, 1994
Paul Yoshiharu Tokiwa Hamilton	Called April 13, 1962 Died November 25, 1994
Stephen George Leggett Downsview	Called September 21, 1962 Died November 30, 1994
Harry Kharm Cuttler Toronto	Called June 21, 1951 Died December 5, 1994
Gerald Ambrose Amell Kingston	Called June 21, 1974 Died December 12, 1994
Frederick Mair Fenton Oakville	Called September 24, 1952 Died December 14, 1994

Noted

C.2.2. (b) Permission to Resign

The following member was permitted to resign his membership in the Society and his name has been removed from the rolls and records of the Society:

Thomas Holyoake Box Aurora	Called April 10, 1984 Permitted to Resign - Convocation November 24, 1994
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Noted

C.2.3. (c) Membership in Abeyance

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

Johanne Lafrance-Cardinal Cornwall	Called April 16, 1980 Appointed to Ontario Court of Justice (Provincial Division) September 6, 1994
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Peter Thornton Bishop
Dryden

Called April 13, 1982
Appointed to Ontario Court of
Justice
(Provincial Division)
September 6, 1994

Stephen Edmond Joseph Foster
Toronto

Called April 9, 1979
Appointed to Ontario Court
(Provincial Division)
November 4, 1994

Hubert James Gregory Campbell
Oshawa

Called May 9, 1979
Appointed Ontario Court
(Provincial Division)
November 7, 1994

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995

C. Campbell
Chair

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

Item B.-B.6. - Copy of the Report to the Admissions Committee re: Andrew
Grant McQuilkin. (3 pages)

THE REPORT WAS ADOPTED

COUNTY & DISTRICT LIAISON COMMITTEE

Meeting of January 12, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

On Thursday, the 12th of January, 1995 at 11:30 a.m., the following members were present: R.C. Topp (Chair), L. Brennan, T. Carey and A. Feinstein. The following members of the County and District Law Presidents' Association Executive were in attendance: D. DiGiuseppe, L. Eustace, M. Hornseth, D. Lovell, J. McKay, J. Morissette, D. Sherman and R. Sonley. Staff in attendance were: G. Howell and B.D. Ashby (Secretary).

1. ONTARIO COURT GENERAL DIVISION DECISION ON BENCHER ELECTIONS

During discussion of the January 6, 1995 decision of Borins, J., an inquiry was made about the possibility of launching an appeal. The Chair of the Committee was urged to speak with the Treasurer to approach the Attorney General in an attempt to obtain her consent and put the necessary amendments allowing for regional benchers elections on the Order Paper before the next benchers election. CDLPA members of the Committee are very concerned that every effort be made to ensure regional representation in the next benchers election.

2. ERRORS AND OMISSIONS

The CDLPA wishes to have a seat on the Board of LPIC in light of the fact that the Canadian Bar Association (Ontario) appears to have one already.

The following resolutions were passed by the CDLPA at the Plenary in November 1994:

1. That the Board of Directors, at LPIC include an equal number of non-benchers lawyers (as there are benchers), who will be drawn from associations or organizations representing the interests of lawyers.
2. That the Treasurer be required to identify those among the staff of the Law Society of Upper Canada and the Lawyers' Professional Indemnity Company and those among the benchers of the Law Society who are responsible and accountable for the current insurance crisis and either terminate their employment or demand their resignation immediately.
3. That benchers and administration staff of the Law Society of Upper Canada be strongly censured for the mismanagement of the Lawyers' Professional Indemnity Company and the mismanagement of the Errors and Omissions Program of the Law Society of Upper Canada.
4. That save and accept the levy in the sum of \$1,100, the Report to Convocation of the Insurance Task Force and the Insurance Committee, which was adopted by the Law Society of Upper Canada, not be implemented until March 31, 1995 in order to give the profession an opportunity to receive, consider and comment on the Report and that the Law Society make appropriate amendments to the said Report.
5. That the CDLPA recommend that the annual fee for membership in the Law Society applicable to all practising lawyers be increased by \$1,000 and the proposed increase to the basic insurance levy as set out in Recommendation (viii) be reduced by \$400,000.
6. That the CDLPA reject the proposal that a member's deductible be called upon in any circumstance other than in the event of a successful claim.

27th January, 1995

3. PLENARY - MAY 1995

May 10, 11, 12, 1995 has been set for the next CDLPA Plenary.

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995

R. Topp
Chair

THE REPORT WAS ADOPTED

DISCIPLINE POLICY COMMITTEE

Meeting of January 12, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE DISCIPLINE POLICY COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of January, 1995 at 1:30 in the afternoon, the following members being present:

D. Scott (Chair), D. Bellamy (Vice-Chair), M. Martin, M. McPhadden, M. Moliner, S. Thom and M. Weaver were present.

M. Brown, J. Yakimovich, S. Kerr and G. Macri also attended.

A.
POLICY

A.1. Annual Filings: Form 2, Question 10

A.1.1. Currently, Form 2, Question 10 requires a member who participates in a joint venture, syndicated mortgage investment, partnership or other form of business enterprise with a client or former client to provide particulars of the business relationship to the Law Society.

A.1.2. On receipt of responses to Question 10, Law Society staff review the information and conduct follow up enquiries of the member to enable staff to determine whether or not potential exists for the breach of any of the Rules of Professional Conduct, in particular, Rules 5, 7 and 23. This task has proven to require the dedication of considerable staff resources, as the responses provided by members usually have not contained the requisite information relevant to the Rules.

27th January, 1995

A.1.3. Your Committee was asked to consider:

- (a) whether the Law Society should continue to compel its members to provide information pertaining to business relationships by way of Form 2, Question 10; and
- (b) if such information should be provided, whether Question 10 should be amended to request information specific to Rules 5, 7 and 23, given the need to perform an adequate review of responses to the question.

A.1.4. Question 10 now reads:

I HAVE/HAVE NOT either directly, or indirectly through a corporation in which I, or a related person has an interest, participated in a joint venture, syndicated mortgage investment, partnership or other form of business enterprise with a client or former client. (Please specify).

A.1.5. Your Committee recommends that Question 10 of Form 2 be retained and that it be amended to read as follows:

I HAVE/HAVE NOT either directly, or indirectly through a corporation in which I, or a related person has an interest, participated in a joint venture, syndicated mortgage investment, partnership or other form of business enterprise with a client or former client.

If answered affirmatively, please complete the following in regard to financing of the joint venture, syndicated mortgage investment, partnership or business enterprise:

- a) I HAVE/HAVE NOT reported this venture in the Law Society report for my last fiscal year;
- b) I HAVE/HAVE NOT been indebted for borrowed money either directly or indirectly to a client or to a person who at the time of borrowing was or had been my client of a firm of which I was then a member;
- c) I HAVE/HAVE NOT personally guaranteed a mortgage, or other document, securing indebtedness, in which a client is involved as a borrower or lender;

In regard to independent legal advice for the client participants:

- d) I HAVE/HAVE NOT complied with the guidelines of Rule 5 and recommended that clients, who have invested in a corporation or other entity in which I have an interest, receive independent legal advice.

(If questions 10(b), (c), or (d) are answered affirmatively, please provide particulars which fully support the reporting. Publicly traded corporations are exempt).

B.
ADMINISTRATION

No items.

C.
INFORMATION

- C.1. Administrative Suspension of Sole Practitioners
 - C.1.1. The Chair, Vice-Chairs and staff will be meeting with representatives of the Bar to assess what steps might be taken to assist practitioners under suspension, for non-payment of the annual fee and Error & Omissions Insurance levy and to protect their clients.
- C.2. Authorization of Discipline Charges
 - C.2.1. Once a month, the Chair and the Vice-Chairs of your Committee meet with staff to consider requests for formal disciplinary action against members.

27th January, 1995

C.2.2. The following table provides a summary of Complaints authorized in 1994.

Total number of charges authorized to date in 1994	
January	20
February	56
March	51
April	24
May	67
June	23
July/August	61
September	40
October	61
November	28
December	150
TOTAL	581

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995

D. Scott
Chair

THE REPORT WAS ADOPTED

NOVEMBER DRAFT MINUTES - November 24 and 25, 1994

(See Draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

27th January, 1995

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of January 12, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on the 12th of January, 1995, the following persons being present:

On January 12th 1995: Marie Moliner (Chair), Stephen Goudge, Nora Richardson, Susan Charandoff, Maria Levell, Bridgid Luke, Marilyn Pilkington, Jocelyn Churchill, Donald Crosbie, Alexis Singer, and Gemma Zecchini.

C.
INFORMATION

- C.1 A Review of Rule 28 - Non-Discrimination
- C.1.1. In December 1994, the Sub-Committee on Rule 28 Education received Judith Keene's draft of a general "question and answer" pamphlet as well as material from the Law Society of England and Wales dealing with anti-discrimination issues. It was observed that although the Law Society of Upper Canada is somewhat more advanced than the Law Society in England and Wales with respect to Legislation and Rules, the Law Society of England and Wales is more advanced than the Law Society of Upper Canada with respect to printing and distributing material to the profession.
- C.1.2. In December 1994, the Sub-Committee agreed that the Under Treasurer would contact the British Columbia Law Society as well as other Law Societies in Canada to promote an exchange of information on progress with respect to a non-discrimination rule in the various jurisdictions. It was also agreed that the Under Treasurer would contact the Law Society of England and Wales again to obtain more copies of the pamphlets and brochures which the Sub-Committee received as well as the "Best Practice" Management Kit and to arrange for a conference call with staff at the Law Society of England and Wales to discuss the British material.
- C.1.3. In December 1994, the Sub-Committee agreed that, where possible, it should adopt the style of the British material with its very direct approach to issues around discrimination. Where the material lends itself to "tips" rather than "question and answer", that format may also be preferable. Any material could refer to a resource document which could be a short compendium of the law and be a somewhat more technical document. It was suggested that this more technical document could be presented to the profession in a brochure or even in a letter form and might take the form of presenting the legislation followed by principles extracted from the leading case law.
- C.1.4. In December 1994, the Sub-Committee agreed that a model policy should be developed and distributed to the profession as well.

27th January, 1995

- C.1.5. It was agreed that responsibility of members for actions of others and for developing policies for monitoring and enforcing Rule 28 would be covered in some of the material dealing with employment and professional dealings.
- C.1.6. In December 1994, the Sub-Committee agreed that a mailing in letter or brochure format setting out the legal principles along with the legislation would assist in educating members with respect to the law in the area covered under Rule 28.
- C.1.7. In December 1994, the Sub-Committee recognized the need to have other program areas participate in the design of the educational material. This participation would not only provide additional expertise, it would also assist in ensuring that Law Society staff is consistently informed about Rule 28. The Under Treasurer was asked to determine which other staff members should assist the Sub-Committee. At the January meeting the Committee was advised that the following staff would assist:
- Professional Conduct - Stephen Traviss
 - Practice Advisory Services - Patricia Rogerson
 - Discipline - Michael Brown
 - Complaints - Scott Kerr or his designate
 - Legal Education - Alan Treleaven or his designate
- C.1.8. At Convocation in January 1995, the Chair will give the Benchers at Convocation copies of the pamphlets from England for their comment.
- C.2. Review of Pamphlet redrafted by Judith Keene and discussion of proposals to have Judith Keene draft other pamphlets and with discussion of material received from the Law Society of England and Wales.
- C.2.1. In January 1995, the Committee received a redraft of Judith Keene's general overview pamphlet as well as a pamphlet drafted by Judith Keene on recruitment. The Committee agreed that Judith Keene should continue to draft the pamphlets and that the subsequent pamphlets to be drafted will cover:
- (a) Rule 28 and employment within a law firm;
 - (b) Rule 28 and partnership;
 - (c) Rule 28 and relations with other members of the profession; and
 - (d) Rule 28 and service to clients.
- C.2.2. In January 1995 the Committee agreed in consultation with Gemma Zecchini that Judith Keene's material could be copy edited by someone knowledgeable in the area of employment equity in order to make the style and format consistent with the more direct British style. The Committee was advised that the use of a copy editor would require that another twenty-five hundred dollars be added to the production budget.

The Committee agreed that the penultimate draft of the general overview and recruitment material as reviewed and revised by the copy editor should be distributed to the Discipline Policy, Professional Conduct, Professional Standards, and Legal Education Committees for review at their February Committee Meetings after informal consultation with the Chair of the Communications Committee.

- C.2.3. The Committee agreed that the material for distribution should be in the same form as the Benchers Bulletin and other material currently being mailed to the profession monthly. It was agreed that the material should be included as part of the Discipline Digest.
- C.2.4. The Committee agreed that the pre-production copy would be presented to Convocation in February for information. It is anticipated that the pre-production copy would then go to print for distribution. The Chair will be asking for approval in principle of subsequent material for the Discipline Digest.
- C.2.5. After discussing various methods of evaluating the material being sent to members, the Committee agreed that a survey would be circulated to the profession to enable the Equity Committee to obtain feedback on the utility of the information provided with respect to Rule 28.
- C.2.6. The Chair will teleconference with personnel from the Law Society of England and Wales to determine how the British material has been received by the profession there and to discuss questions of evaluation of the material as well as methods of handling any backlash which may have occurred.
- C.4. Strategic Planning Conference Recommendation
 - C.4.1 The Committee considered the question of whether law firms who are not currently covered by Employment Equity legislation by virtue of having fewer than 50 employees might still be required to have an Employment Equity Plan under Rule 28. A committee member will investigate further the government's reasons for exempting firms and businesses with fewer than 50 employees from the legislation before further action is taken in this regard.
- C.5. Equity Project
 - C.5.1 The Committee will discuss a bicentennial equity project more fully in February 1995 when Frances Kiteley, a member of the Bicentennial Committee will attend the Equity in Legal Education and Practice Committee meeting to explore possible projects.
- C.6. Canadian Bar Association National Study on Discrimination

27th January, 1995

C.6.1 The Chair provided updates on this Committee.

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995

M. Moliner
Chair

THE REPORT WAS ADOPTED

INVESTMENT COMMITTEE

Meeting of January 12, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of January, 1995 at nine-thirty in the morning, the following member being present: Ms. Kiteley. Staff members present were David Crack and David Carey.

B.
ADMINISTRATION

1. Investment Report

The Deputy Director of Finance presented to the Committee the investment report summaries for the various Law Society Funds together with supporting documentation for the two months ended December 31st, 1994 (Schedule A).

Approved

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995

J. Wardlaw
Chair

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

Item B.-1. - Report of the Committee as at December 31, 1994.
(Schedule A)

THE REPORT WAS ADOPTED

27th January, 1995

LEGAL AID COMMITTEE

Meeting of January 12, 1995

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 12th of January, 1995, the following members being present: Stephen Goudge, Chair, L. Brennan, J. Campbell, S. Cooney, P. Copeland, R. Lalande, A. Rady, M. Stanowski, and B. Sullivan.

The following senior members of staff were present: Bob Holden (Provincial Director), George Biggar (Deputy Director - Legal), Bob Rowe (Deputy Director - Finance) and Ruth Lawson (Deputy Director - Appeals).

Note: P. Peters also in attendance on January 12, 1995

A.
POLICY

A.1 STRATEGIC PLANNING SUB-COMMITTEE

A.1.1 The Strategic Planning Sub-Committee continues to meet regularly to discuss the Plan's priorities and strategic planning. The Report of the Strategic Planning Sub-Committee is attached hereto and marked as SCHEDULE A.

A.2 THE ROLE AND RESPONSIBILITIES OF
THE LEGAL AID COMMITTEE MEMBERS

In January, 1994 the Appointments Sub-Committee recommended the appointment of three new non-bencher lawyer members of the Legal Aid Committee. An appendix to that report described the role and responsibilities of Committee members. As a result of time constraints the appendix was not considered by the Committee. A re-drafted report was presented and adopted by the Legal Aid Committee. This report is attached hereto and marked as SCHEDULE B.

A.3 REPORT RE THE REFUGEE LAW OFFICE

The Refugee Law Office is not as busy as had been anticipated. A report was presented to the Legal Aid Committee which contained two recommendations: (i) that the Refugee Law Office expand its coverage of cases to include any refugee judicial review applications in the Federal Court from anywhere in the Province and (ii) extend its geographic boundaries beyond Metropolitan Toronto to include cases of refugee claimants for representation before the Refugee Division of the Immigration and Refugee Board who are residents of regions surrounding Metropolitan Toronto, namely, Peel Region, York Region and Durham Region. It is also recommended that the caseload of the Refugee Law Office continue to be monitored and a report made to the Legal Aid Committee in three months' time to inform them of the progress made as a result of adopting these recommendations and, if necessary to propose other options.

The Report on the Refugee Law Office is attached hereto and marked as SCHEDULE C.

B.
ADMINISTRATION

B.1 STATEMENT OF INCOME AND EXPENDITURE FOR
THE EIGHT MONTHS ENDED NOVEMBER 30, 1994

The Statement of Income and Expenditure for the Eight Months Ended November 30, 1994 was presented to the Legal Aid Committee by the Deputy Director, Finance and is attached hereto as SCHEDULE D.

B.2 REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS FOR THE
MONTHS OF NOVEMBER AND DECEMBER, 1994

The Reports on the Payment of Solicitors Accounts for the months of November and December, 1994 are attached hereto and marked as SCHEDULE E.

B.3 REPORTS ON THE STATUS OF REVIEWS IN THE LEGAL ACCOUNTS
DEPARTMENT FOR THE MONTHS OF NOVEMBER AND DECEMBER, 1994

The Reports on the Status of Reviews in the Legal Accounts Department for the months of November and December, 1994 are attached hereto and marked as SCHEDULE F.

B.4 REPORT CONCERNING DIRECT DEPOSITS

The Plan intends to begin depositing lawyers cheques directly into their bank accounts. A report concerning the implementation of this plan is attached hereto and marked as SCHEDULE G.

B.5 REPORT ON SETTLEMENT CONFERENCE PROGRAM

A Report concerning the Plan's Settlement Conference Program is attached hereto and marked as SCHEDULE H.

B.6 AREA COMMITTEES - APPOINTMENTS AND RESIGNATION

APPOINTMENTS

Metropolitan Toronto

Frank Addario, solicitor
O. Jacqueline Brooks, policy analyst
Jack Daiter, solicitor
Barry A. Fox, solicitor
Murray Lightman, solicitor
Peter Martin, solicitor
John Percival, chartered accountant
Samuel Starkman, solicitor

Northumberland

A. Ronald Good, solicitor

Perth

Michael E. Dunn, employee City of Stratford
Beverlee James, retail store owner
Howard H. Hallam, Human Resources Manager

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Simcoe

Roberta Beecroft, registered nurse and teacher

York Region

Rosalyn Sutherland, registered nurse, counsellor and teacher
Caryl E. Young, solicitor

RESIGNATIONS

Metropolitan Toronto

Brenda Wemp
Philip Paterson
Carol Cattell
Donalda Taynen

Northumberland

Michael Harrison

York Region

Chris Sorley
Gertrude Sheridan

C.
INFORMATION

C.1 A copy of an article in Focus Magazine October/November, 1994 concerning automation at the Ontario Legal Aid Plan is attached hereto and marked as SCHEDULE I.

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995

S. Goudge
Chair

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

- Item A.-A.1 - Copy of the Report of the Strategic Planning Sub-Committee.
(Schedule A)
- Item A.-A.2 - Report of the Role and Responsibilities of Legal Aid Committee Members.
(Schedule B)
- Item A.-A.3 - Memorandum from Ms. Ruth Lawson, Deputy Director, Appeals to the Legal Aid Committee dated January 12, 1995 re: (1) Refugee Law Office; (2) Recent Immigration Programs for Refused Refugee Claimants (PDRCC and DROC).
(Schedule C)
- Item B.-B.1 - Statement of Income and Expenditure for the Eight Months Ended November 30, 1994.
(Schedule D)

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- Item B.-B.2 - Reports on the Payment of Solicitors Accounts for the months of November and December, 1994. (Schedule E)
- Item B.-B.3 - Reports on the Status of Reviews in the Legal Accounts Department for the months of November and December, 1994. (Schedule F)
- Item B.-B.4 - Memorandum from Mr. Russell Hall, Controller to Mr. Bob Rowe, Deputy Director, Finance dated January 4, 1995 re: Direct Deposit. (Schedule G)
- Item B.-B.5 - Report re: Ontario Legal Aid Plan Settlement Conference Program. (Schedule H)
- Item C.-C.1 - Copy of article re: Automated Office. (Schedule I)

THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

Meeting of January 12, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE seeks leave to report:

The Committee met on Thursday, the 12th of January, 1995, at 10:30 a.m.

The following members were in attendance: Philip Epstein (Chair), Susan Elliott (Vice-chair), Donald Lamont (Vice-Chair), Colin McKinnon (Vice-chair), Ian Blue, Lloyd Brennan, Allan Lawrence, Jban Lax, Dean Marilyn Pilkington (Osgoode Hall Law School), Marc Rosenberg (non-Bencher member), and Stuart Thom. Bencher Thomas Carey also attended. The following staff were in attendance: Marilyn Bode, Brenda Duncan, Alexandra Rookes, Sophia Sperdakos and Alan Treleaven.

A.
POLICY

A.1 PROPOSED PROFESSIONAL RESPONSIBILITY AND PRACTICE MANAGEMENT EXAMINATION

A.1.1 Bar Admission Course students are currently taught and tested in professional responsibility and practice management in all three phases of the Bar Admission Course. The testing is completed as follows:

- 1) Phase One: a brief oral test,
- 2) Phase Two (Articling): a written and oral examination with individual articling principals,

- 3) Phase Three: a seven part examination, with one part being appended as an additional 30 minute item to each of the seven substantive law and procedure examinations. The passing standard in 1994 was 60 percent on each of five out of the seven parts.

A.1.2 The Committee is concerned about the performance of students in the Phase Three Professional Responsibility and Practice Management examination. The Bar Admission Course Faculty have endeavoured to enhance student performance through improved course design and the addition of new professional responsibility and practice management instructional content in Phase Three in 1993 and 1994. There is, however, a concern that student examination performance may be adversely influenced by the time pressures of having to prepare for and write simultaneously the seven substantive law and procedure examinations.

A.1.3 The Committee therefore recommends that for 1995 a separate examination be scheduled in Phase Three in Professional Responsibility and Practice Management, in place of the current seven part examination spread out over the seven substantive law and procedure examinations. It is hoped that by giving students an opportunity to focus on professional responsibility and practice management in the examinations, their knowledge, ability and performance will improve.

A.1.4 At the same time as students would be tested in a separate Professional Responsibility and Practice Management examination, professional ethical matters would be examinable in any number of the seven substantive law and procedure examinations, and in each such examination the performance would count toward the grade in the particular examination rather than toward the separate Professional Responsibility and Practice Management examination.

A.1.5 Recommendation: It is recommended that for Phase Three of 1995 there be a separate written examination in Professional Responsibility and Practice Management.

B.
ADMINISTRATION

No Regular Business and Administration to deal with this month.

C.
INFORMATION

C.1 REVIEW OF LAW SOCIETY PROGRAMS

C.1.1 The Research and Planning Committee and the Priorities and Planning Subcommittee (of the Finance and Administration Committee) have requested that the Legal Education Committee and all other Law Society committees review their activities, programs and proposals in light of the Law Society's Role Statement adopted by Convocation on October 27, 1994. It is intended that the review be the first step in a strategic planning exercise for establishing priorities and objectives for the Law Society. The Research and Planning Committee has requested the report for no later than September 21, 1995.

C.1.2 The Communications Department has set up a one day workshop in February for designated Law Society staff to provide practical education on how to conduct program reviews and to enable the committees to produce reports that are consistent in their approaches and evaluation criteria.

C.1.3 The Legal Education Committee will initiate its review immediately following the mid-February staff meeting. To that end, the work currently being done by the Bar Admission Course Review Subcommittee, the Articling Subcommittee and the Mandatory Continuing Legal Education Subcommittee will serve as the cornerstone for the report.

C.2 MANDATORY CONTINUING LEGAL EDUCATION SUBCOMMITTEE

C.2.1 The M.C.L.E. Subcommittee working groups have been meeting to study the various topics specific to each group. The working groups include representatives from a variety of constituencies, such as the C.B.A.O., Advocates' Society and the County and District Law Associations.

C.2.2 The Empirical Evidence Working Group, chaired by Stephen Goudge, is gathering information from the various departments within the Law Society about problem areas within the profession, as well as seeking information from other jurisdictions about their M.C.L.E. programs.

C.2.3 The Content Working Group, chaired by Ian Blue, is considering a possible M.C.L.E. model intended to enhance competence and foster loss prevention education.

C.2.4 The Delivery Working Group, chaired by Susan Elliott, is investigating delivery systems including use of C.D.-Rom, interactive video conferencing, audio conferencing and enhanced use of office computer facilities for educational purposes. The Delivery Group is meeting with a consultant, experienced in the use of technology for business and educational purposes, to study practical and cost efficient use of technology in a continuing legal education context.

C.2.5 The Providers/Administrative Model Working Group, chaired by Philip Epstein, is considering issues related to administrative requirements for an M.C.L.E. program. The group is also discussing quality control and enhancement of C.L.E. programming, the types of activities that lawyers should be permitted to undertake to meet an M.C.L.E. requirement, and ways to accommodate the need for more instructors and trainers that would be created by an M.C.L.E. requirement for all active members of the Bar.

C.2.6 The Subcommittee will produce an interim report for Convocation and for circulation to the profession so that there will be full consultation before final decisions are made by Convocation.

C.3 ARTICLING SUBCOMMITTEE

C.3.1 The Subcommittee met at 8:00 a.m. on November 23. In attendance were Marc Rosenberg (Chair), Victoria Colby, Kathy Nedelkopoulous, Jay Rudolph and Susan So. Staff members attending were Marilyn Bode, Lynn Silkauskas and Alan Treleaven.

- C.3.2 The Subcommittee had a useful discussion with Jack Pappalardo, an Ontario lawyer who had been a Joint Committee on Accreditation ("J.C.A.") student. Mr. Pappalardo had offered his assistance in response to a Notice to the Profession from the Articling Subcommittee about J.C.A. students and articling. The discussion focused on information provided to J.C.A. students on the articling recruitment process, including the timing of recruitment and the matching process. Suggestions were made as to how to ensure students receive the information at the first opportunity. Mr. Pappalardo was thanked for his comments and attendance.
- C.3.3 The Subcommittee gave conditional approval to a further 15 applications from prospective articling principals for the 1994-95 articling term. To November, approximately 1514 members have been approved to serve as principals for the 1994-95 articling term. One member was denied approval based on unsatisfactory participation in the Practice Review Program. Another individual of that member's firm was invited to apply to serve as an articling principal.
- C.3.4 The Subcommittee also gave conditional approval to 141 applications from prospective articling principals for the 1995-96 articling term. To November, approximately 498 members have been approved to serve as principals for the 1995-96 articling term.
- C.3.5 The Subcommittee gave special consideration to the applications of two members applying for the 1994-95 articling term. One application was approved. One application was denied based on unsatisfactory participation in the Practice Review Program. Another individual of the applicant's firm was invited to apply to serve as an articling principal.
- C.3.6 The Subcommittee considered two policy items. The first was a consideration of articling placement issues. Marc Rosenberg provided an update on the 1994-95 articling placement situation. (An updated report will be distributed to Convocation on January 27.)
- C.3.7 The second policy item was articulated students' outside employment. The Legal Education Committee had considered the case of a student in October. The student, with the concurrence of his articling principal, undertook a modest amount of paralegal work during his articling term that was unsupervised by the principal or another lawyer. He collected a fee for the services rendered. The Articling Subcommittee in October instructed the Articling Director to write to the student reminding him that paralegal activities must be suspended while he is a student member of the Law Society. That was done. The Subcommittee considered the current policy on outside employment during Phase Three. It decided that although the current policy is adequate, it should receive wider publication to students in all phases of the Bar Admission Course.
- C.3.8 The Subcommittee discussed the Notices of Motion received by the Secretary of the Law Society for the Law Society's Annual General Meeting on November 9, 1994. Marc Rosenberg advised the Subcommittee that motion 2, calling for the abolition of articling, was defeated. The Subcommittee discussed the other three motions, which were passed at the meeting. The Subcommittee consulted with Phase Three student representatives on the motions passed at the Annual General Meeting. The Chair of the C.B.A.O. Student Division will also be contacted. The Subcommittee will further discuss the issues at its subsequent meetings.

- C.3.9 There was one information item. The Articling Director reported that a proposal for the establishment of a support network for unplaced articling students is expected to be received from one of the current unplaced Bar Admission Course students in time for the January 1995 meeting of the Subcommittee. The Subcommittee had a preliminary discussion of the issue at its October 1994 meeting.
- C.4 ARTICLING PLACEMENT MENTOR PROGRAM UPDATE
- C.4.1 The Director of Placement reports that of the 60 students who registered to be paired with a mentor to assist in their search for articles, eight (13 percent) found a position before the first meeting with their mentor, 37 (62 percent) secured a position after commencing meetings with their mentor, and five (eight percent) decided to pursue other options (e.g., an M.B.A., return to home province, joined Canadian Forces). Ten (16 percent) of the students paired with mentors continue their search for an articling position.
- C.4.2 Of the 37 students who secured a position, nine are volunteering their time or working for nominal compensation to get their articles under way. Of that group of nine, five are actively seeking alternative articles.
- C.4.3 The Placement Office will conduct a survey of participants in the program to determine its overall effectiveness. Preliminary results suggest that the program was successful, as 71 percent (37 of 52) of students participating secured a placement following their pairing with a mentor.
- C.5 ARTICLING STUDENT PLACEMENT FOR THE 1995-1996 TERM
- C.5.1 The 1995 Bar Admission Course application form asks students to advise if they have secured an articling position. The Placement Office has created a database to record this information for program planning and regular reporting. At this time there is nothing statistically significant to report. The Director of Placement anticipates having some useful data available for the meetings of the Articling Subcommittee and the Legal Education Committee commencing in February.
- C.6 BAR ADMISSION COURSE REVIEW SUBCOMMITTEE
- C.6.1 Bar Admission Course Review Subcommittee representatives met with the following Ontario Law Deans and other Benchers for a dinner meeting on Monday, November 21, 1994: Dean Jeffrey Berryman (Windsor), Dean Donald Carter (a member of the Subcommittee, Queen's), Dean Peter Mercer (Western), Dean Robert Sharpe (Toronto), Tom Bastedo and Fran Kiteley. Members of the Subcommittee in attendance were: Philip Epstein, Stephen Goudge and Marc Rosenberg. Erika Abner and Alan Treleaven attended on behalf of the staff.
- C.6.2 Bar Admission Course Review Subcommittee representatives met with members of the profession in Toronto for a dinner meeting on Monday, December 19, 1994. Subcommittee members in attendance were Philip Epstein, Stephen Goudge, Donald Lamont, Joan Lax and Dean Marilyn Pilkington. Guests from the practising bar in Toronto were Catherine Brayley, John Claydon, Jeffrey Cowan, Susanne Goodman, Paul Perell, Gary Shiff, David Stinson, Donald Thomson, Sid Troister and Michael Watson. Erika Abner and Alan Treleaven attended on behalf of the staff.

C.6.3 The meetings focused on the following issues:

- 1) The adequacy of student knowledge of substantive law and procedure on entering the Bar Admission Course,
- 2) What knowledge, skills and attitudes students ought to possess to be licensed to practice law,
- 3) Possible changes to the examination process, including the pros and cons of entrance examinations,
- 4) Whether there should be limited licensing of lawyers according to practice areas,
- 5) Whether the Bar Admission Course is too intensive,
- 6) How articling could be improved as an educational experience,
- 7) Whether articling might be replaced by a supervised practice requirement.

C.6.4 On December 9, 1994 Marc Rosenberg, in his capacity as Chair of the Articling Subcommittee, met with elected student representatives from Phase Three of the Bar Admission Course in Toronto. Philip Epstein also attended, together with Marilyn Bode, Lynn Silkauskas and Alan Treleaven of the staff. Although the focus of the discussions was on issues relating to availability of articling positions, articling salaries and articling working conditions, there was some discussion of the educational quality of articling. Several students said that law schools, except for optional clinic programs, do not prepare students to articulate effectively. Students proposed that the Bar Admission Course teaching term precede articling, and in particular that a program like Phase Three would have been very valuable to students if placed before articling. A number of students also said that there should be a great deal more teaching prior to articling of procedure to follow in the practice of law. There was considerable concern expressed about the length and intensity of the entire bar admission process.

C.6.5 The Subcommittee will be holding consultative dinner meetings with representatives of the profession in Ottawa on Thursday, February 9 and in London on Tuesday, February 14, following the respective calls to the Bar in those locations.

C.6.6 In addition, recent graduates of the Bar Admission Course are being invited to participate in consultative meetings in early February.

C.7 LAW SOCIETY OF UPPER CANADA SPECIAL LECTURES

C.7.1 The topic of the upcoming Special Lectures is "Principles and Proofs in the Law of Remedies". The lectures will be held in Toronto on Thursday, April 27 and Friday, April 28. The theme of the lectures is that a lawyer requires knowledge about specific remedies, about remedies generally, and about how to move from theory to practice. A lawyer requires an understanding of the elements of specific remedies, such as the common law remedy of damages, the equitable remedies of specific performance and injunctions, the statutory oppression remedy, and the proprietary or compensatory remedies

linked with causes of action such as unjust enrichment. A lawyer requires knowledge about how to select a remedy, which requires an understanding of the role and relationship of remedies generally. A lawyer requires the practical knowledge of how to marshal evidence to prove the factual elements of a remedy.

C.7.2 The Special Lectures are being chaired by Paul Perell of Weir & Foulds, and Planning Committee members are The Honourable Mr. Justice George Adams, Joan Lax, Sheila Block, John Campion and Tom Cromwell. Confirmed speakers to date include: Sheila Block, Nigel Campbell, John Campion, Jeffrey Cowan, Eleanore Cronk, John McCamus, Robert Munro, Paul Perell, Dean Marilyn Pilkington, Denis Power, David Sgayias, Robert Sharpe, Ronald Slaght, Stephen Waddams and Ben Zarnett.

C.8 JOINT COMMITTEE ON ACCREDITATION

C.8.1 The role and process of the Joint Committee on Accreditation ("J.C.A.") are being examined by the Legal Education Committee.

C.8.2 Persons wishing to be admitted to the practice of law in Ontario must do so by one of the following means:

- a) Obtain a Certificate of Qualification from the J.C.A., and then complete the Bar Admission Course successfully,
- b) Obtain a Canadian LL.B. degree and complete the Bar Admission Course successfully,
- c) After having practised law for the required period of time in another Canadian jurisdiction, successfully write the Ontario transfer examinations (with special restrictive provisions relating to some Alberta and Quebec lawyers), or
- d) As an Ontario law school Dean or full-time member of faculty, meet the academic call requirements.

C.8.3 Persons who proceed by the Certificate of Qualification route must apply to the J.C.A., which evaluates the legal training and professional experience of persons with foreign or Quebec non-common law legal credentials. The J.C.A., after evaluating the legal training and professional experience, requires persons either to attend at a Canadian common law faculty to complete a specified number of courses or to write specified J.C.A. administered challenge examinations.

C.8.4 The Legal Education Committee will continue studying J.C.A. related issues, with the study being conducted by a special subcommittee. Due to the busy agenda of the current Legal Education Committee until its term expires, the Chair recommends deferral of this study until the Bar Admission Course Review Report and the M.C.L.E. Report are completed.

C.8.5. The Legal Education Committee asked Philip Epstein to inform the Federation of Law Societies about the study and to recommend that the Federation and Canadian Council of Law Deans work with the J.C.A. in a review of its policies and procedures on a national basis.

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C.9 CONTINUING LEGAL EDUCATION REPORT ON COURSES

- C.9.1 The Continuing Legal Education Report, prepared by the Director of Continuing Legal Education, Brenda Duncan, is attached. (pages 1 - 5)

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995

P. Epstein
Chair

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

- Item C.-C.9.1 - Copy of the Continuing Legal Education Report. (pages 1 - 5)

Also attached a copy of the Articling Student Placement 1994/95 Articling Term (as at January 12, 1995).

THE REPORT WAS ADOPTED

PROFESSIONAL CONDUCT COMMITTEE

Meeting of January 12, 1995

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 12th of January, 1995 at three o'clock in the afternoon, the following members being present: F. Kiteley (Vice-Chair in the Chair), K. Braid, T. Carey, M. Cullity, M. Hickey and M. Moliner. The following staff were present: M. Devlin, D. Godden, D. Dymont and S. Traviss.

A.
POLICY

1. INJURY HELPLINE WHICH OPERATES IN 44 AMERICAN STATES WOULD LIKE TO SET UP IN ONTARIO - THIS SERVICE ASSISTS TELEPHONE INQUIRIES FROM MEMBERS OF THE PUBLIC BY PUTTING THEM IN TOUCH WITH LAWYERS PRACTISING PERSONAL INJURY LAW

R. W. Lynch Co. Inc. (RWL) of California is a legal marketing firm that assists lawyers and law firms with media advertising (and, in particular, television advertising). This company also runs the Injury Helpline which has television advertisements that emphasize to viewers that they should obtain legal advice if they have been injured.

RWL wishes to operate the Injury Helpline in Ontario.

The Injury Helpline - How it Operates

- (1) The Helpline is operating in 44 American states and the number of participating law firms fluctuates between 450 and 500.
- (2) RWL has produced television advertisements that emphasize the desirability of persons who have been injured getting legal advice.
- (3) The advertisements give an 800 number that members of the public can phone toll free. In the United States RWL lists in the TV advertisements participating lawyers/law firms and, depending on the State bar requirements, may also list addresses, geographical service areas and the like. RWL would prefer not to list any names in the advertisements in Ontario which detracts from the time devoted to the message being presented.
- (4) Lawyers who participate must warrant to RWL that they do personal injury work and are in good standing with their state bar and carry negligence insurance.
- (5) Lawyers pay an annual fee to participate. The lawyers do not divide fees with RWL. The agreement provides for a term of 12 months and for monthly payments.
- (6) Lawyers who participate are assigned to a particular geographic area in the state in which they practise. They would normally have an office in that geographical area.
- (7) Lawyers who apply to participate are chosen by RWL on a first come, first served basis assuming they give the warranty in paragraph 4 and pay the annual fee in paragraph 5.
- (8) Members of the public who phone in are asked where they live. They are put in touch with a lawyer practising personal injury law in that area.
- (9) The state bars in 44 states have approved lawyers participation in the Injury Helpline.
- (10) William Hornsby, the staff counsel at the ABA's Commission on Advertising in commenting on the high standard of advertising by RWL has stated:

"It is clear from their presentation that this service benefits those primarily of low and moderate income, who may otherwise have the greatest difficulty finding appropriate legal advice and representation."

Policy Issues raised by the Proposal

- (1) The Law Society has not yet addressed the policy question of group advertising by lawyers. Rule 12 permits individual lawyers or law firms to advertise in any medium provided that what is said is accurate, in good taste and does not offend the administration of justice.
- (2) Paragraph 5(f) under Rule 12 raises the steering issue. It reads:

The lawyer shall not:

- (f) arrange for or encourage anyone (e.g., a real estate agent) to make a practice of recommending to any person that the lawyer's services be retained;

Does this apply to the RWL proposal? The danger in steering is that a person might be referred to a lawyer who may not be competent to handle the legal problem in question. The other danger in steering is that there might be some sort of quid pro quo behind the referrals.

- (3) There is an access to legal services issue raised by the Injury Helpline. The television advertising serves to remind members of the public who may have been injured that they have legal rights that they must not sit on. It also operates to put them in touch with lawyers who are knowledgeable in personal injury law. The Law Society should permit lawyer participation in these type of helplines if it is determined that it is in the public interest because it promotes access to justice.

The Committee met with RWL's inhouse counsel, Mr. Cal Darrow, and its Ontario Counsel, Mr. Robert W. Taylor, to discuss the proposal and viewed a brief clip on its Injury Helpline Hotline.

The Committee concluded that:

- (1) Rule 12 should be interpreted to permit the helpful group advertising by lawyers of the type assigned by RWL in the Injury Helpline.
- (2) The RWL scheme does not constitute the steering addressed by paragraph 5(f) under Rule 12 in view of the warranty. There is no quid pro quo such as that typically raised as a concern.
- (3) There would be value to the public in obtaining greater access to legal services in the area of personal injury law.

The Committee has concluded for the three reasons noted above that Ontario lawyers should be permitted to participate in the Injury Helpline. A copy of the detailed material provided by RWL can be obtained from Stephen Traviss at 947-3350.

2. LAWYER PROPOSES TO OPERATE A
TELEPHONE ADVISORY SERVICE FROM
HIS LAW OFFICE ON A 24 HOUR BASIS

Mr. Howard Crosner, a Toronto lawyer, proposes to turn his sole practice to a practice that would focus in on providing basic legal advice by telephone 24 hours a day, 7 days a week on a number of legal subjects that would include the following areas:

- Administrative Law
- Civil Litigation
- Criminal Law
- Family Law
- Immigration
- Landlord-Tenant
- Real Estate
- Wills and Estates

27th January, 1995

Mr. Crosner would hire a number of lawyers to handle the telephone inquiries. The law firm would advertise its telephone service and members of the public would phone the number given in the advertising. An operator would answer the phone and explain the phone charges that would be paid by a credit card. The operator would telephone the credit card company to obtain the necessary authorization. It would be explained to the member of the public phoning in that the charge would be \$2.99 per minute. The inquiring member of the public would then be referred to a lawyer who would discuss the inquiry with this client. At the conclusion of the interview the lawyer would tell the client the total fee and an account (already paid for by credit card) would be sent out to the client.

The proposed guidelines would specify that:

- (a) the client would be told as soon as possible if the inquiry required the services of another lawyer with greater knowledge and experience with the legal problem in question. No document would be reviewed by the law firm unless it was short in length and could be quickly faxed. The member of the public would in either of these circumstances be referred to a lawyer capable of handling the inquiry or to the Law Society's Lawyer Referral Service.
- (b) The law firm will only give out basic legal advice. If further legal services are required the client will be referred out to another lawyer or law firm.
- (c) If a client is unhappy with the legal services rendered, the client will be referred to an independent referee who will resolve the complaint. If the referee finds that the fee charged is too large, the law firm will refund it in whole or in part. The law firm would agree to any assessment of a legal account and would see to it that any order requiring a reduction in the fee would be complied with.

The Committee identified the following policy issues raised by this proposal:

- (1) The nature of the services rendered would be very attractive to members of the public particularly those who cannot get to a law firm because of their work schedules or due to their age or physical infirmity or reluctance to physically go to a law firm.
- (2) Convocation in January 1993 adopted the Report on Access to Legal Services that recommended the Law Society approve of lawyer participation in those schemes (including prepaid legal services plans) that would provide and facilitate the availability of legal services to the public.
- (3) While the Law Society does not endorse schemes that accomplish the objective set out in (2) above, it will indicate that there is no problem with lawyer participation in such schemes.

The Committee met with Mr. Crosner who indicated that he would make any changes in his proposal where the Law Society decided this was necessary.

The Committee recommends to Convocation that it adopt its conclusion that the telephone legal advisory service is not prohibited by the Rules of Professional Conduct.

A copy of the detailed material provided by Mr. Crosner can be obtained from Stephen Traviss at 947-3350.

27th January, 1995

B.
ADMINISTRATION

1. NUMBER FOR THE RULE PASSED BY CONVOCATION
TO DEAL WITH THE MIGRATING LAWYER PROBLEM
RAISED BY THE SUPREME COURT OF CANADA IN
THE MARTIN V. GRAY CASE

Convocation adopted the Federation of Law Societies draft Rule on conflicts created by the migrating lawyer. The Committee in its deliberations on the Rule and in its recommendations did not assign a number to this new Rule.

The new Rule should be number 29.

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995

M. Somerville
Chair

THE REPORT WAS ADOPTED

SPECIALIST CERTIFICATION BOARD

Meeting of January 12, 1995

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 12th of January 1995 at nine o'clock in the morning, the following members being present: R. Yachetti (Chair), P. Furlong, C. McKinnon and M. Pilkington. C. Giffin, of the Law Society, was also present.

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

The Immigration Law Specialty Committee met (in person/conference call) on Wednesday, the 16th of November, 1994 at twelve-thirty in the afternoon.

The Workers' Compensation Law Specialty Committee met on Thursday, the 17th of November, 1994 at five-fifteen in the evening.

The Criminal Law Specialty Committee met (conference call) on Friday, November 25, 1994 at one o'clock in the afternoon.

The Family Law Specialty Committee met (in person/conference call) on Monday, December 5, 1994 at four o'clock in the afternoon.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, December 13, 1994 at eight-thirty in the morning.

The Intellectual Property Law Specialty Committee met (in person/conference call) on Tuesday, December 13, 1994 at twelve o'clock in the afternoon.

On behalf of the Immigration Law Specialty Committee, the Committee Chair (M. Green) met (by telephone) with the Program Administrator on Wednesday, January 4, 1995.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, January 10, 1995 at eight-thirty in the morning.

A.
POLICY

A.1. APPLICATION PROCESSING - COMPLAINTS RECORD

A.1.1. In some instances Professional Standards has reviewed an applicant's internal record and has indicated that the applicant is "not a Practice Review candidate, but pattern and number of complaints gives rise to concerns about possible practice management issues..." These comments are not considered by the Board until the final stage of the application process.

A.1.2. Your Board approved the following policy in an effort to improve application processing time:

A.1.2.1. Administrator will inform an applicant, by letter at the beginning of the application processing period, of the pattern of complaints and request further information and/or explanations in anticipation of the Board's final review.

B.
ADMINISTRATION

B.1. SIX-MONTH CERTIFICATE EXTENSIONS

The Board extended for up to six months those certificates which have expired on December 5, 1994 and January 11, 1995 to allow time for the proper processing of the recertification applications.

B.2. CRIMINAL LAW SPECIALTY COMMITTEE MEMBERSHIP - 1995

B.2.1. The Criminal Law Specialty Committee recommends no changes to membership for 1995, composed as follows:

Alan Gold (Chair) (of Toronto)
Jeffrey Manishen (Vice-Chair) (of Hamilton)
Patrick Ducharme (of Windsor)
Susan Ficek (of Toronto)
Diana Fuller (of Sudbury)
Daniel Mitchell (of Thunder Bay)
Michael Anne MacDonald (of Bracebridge)
Michael Neville (of Ottawa)
Norman Peel (of London)

B.3. CIVIL LITIGATION SPECIALTY COMMITTEE MEMBERSHIP - 1995

B.3.1. The Civil Litigation Specialty Committee recommends no changes to membership for 1995, composed as follows:

William Festeryga (Chair) (of Hamilton)
Barbara Grossman (of Toronto)
Donald Jack (of Toronto)
James Lewis (of Mississauga)
James O'Grady (of Ottawa)
Nancy Spies (of Toronto)
David Williams (of London)

B.4. INTELLECTUAL PROPERTY LAW SPECIALTY COMMITTEE MEMBERSHIP - 1995

B.4.1. The Intellectual Property Law Specialty Committee recommends that membership for 1995 be composed as follows:

Ron Dimock (Chair) (of Toronto)
Carol Hitchman (of Toronto)
Malcolm Johnstone (of Toronto)
Scott Jolliffe (of Toronto)
Charles Kent (of Ottawa)
John Macera (of Ottawa)
David Morrow (of Ottawa)
Cynthia Rowden (of Toronto)
Colleen Spring-Zimmerman (of Toronto)

C.
INFORMATION

C.1. CERTIFICATION OF SPECIALISTS

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

Howard Winkler (of Toronto)

C.1.2. Your Board is pleased to report the certification of the following lawyer as a Criminal Law Specialist:

Janet Leiper (of Toronto)

C.1.3. Your Board is pleased to report the certification of the following lawyer as a Family Law Specialist:

Robert Spence (of Toronto)

C.1.4. Your Board is pleased to report the certification of the following lawyers as Immigration Law Specialists:

Peter A. Re kai (of Toronto)
Robin Seligman (of Toronto)

C.1.5. Your Board is pleased to report the certification of the following lawyer as an Intellectual Property (Patent) Law Specialist:

Alexander Macklin (of Toronto)

27th January, 1995

C.2. RECERTIFICATION OF SPECIALISTS

C.2.1. Your Board is pleased to report the recertification for an additional five years of the following lawyers as Civil Litigation Specialists:

Crawford MacIntyre (of Toronto)
Marek Tufman (of Toronto)

C.2.2. Your Board is pleased to report the recertification for an additional five years of the following lawyer as a Criminal Law Specialist:

Brian Greenspan (of Toronto)

C.3. NEW CERTIFICATION OF PREVIOUSLY CERTIFIED DUAL CIVIL & CRIMINAL SPECIALISTS

C.3.1 Your Board is pleased to report the certification of the following lawyers, who were "grandfathered" as dual Civil/Criminal Specialists and which designation has since been abolished, as Civil Litigation Specialists:

Douglas J. Crane (of Toronto)
Murray N. Ellies (of Kirkland Lake)
John Joseph Kelly (of Kitchener)
Daniel J. Murphy (of Goderich)
John P. Nelligan (of Ottawa)
Robert J. Upsdell (of St. Thomas)
J. Donald Waechter (of Walkerton)

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995

R. Yachetti
Chair

THE REPORT WAS ADOPTED

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of January 12, 1995

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 12th of January, 1995 at 9:30 a.m., the following members being present: P. Peters (Chair), N. Finkelstein (Vice Chair) and M. Hickey. Guest: D. Lovell. Staff in attendance was: A. John (Secretary).

27th January, 1995

B.
ADMINISTRATION

1. SECTION 50 PROSECUTIONS

Your Committee provided a Report to Convocation in September 1994 which contained a lengthy memorandum on s. 50 prosecutions by the Law Society of Upper Canada. The following two Recommendations were contained in the memorandum:

1. That the Law Society continue to maintain the current level of s. 50 prosecutions until June 1995, after which prosecutions by the Law Society will cease.
2. That the Law Society invite the Attorney General of Ontario to consider legislation which establishes the training, licensing and regulation of paralegals. In particular, the Law Society should:
 - a) Implement Convocation's Recommendation to establish a tri-partite committee.
 - b) Establish an information sharing network among the Law Society, the courts and various government agencies [e.g., Ontario Court (General Division), Ontario Court (Provincial Division), the Ministry of the Attorney General, the Department of Employment and Immigration, the local provincial and federal Police Forces] to notify interested parties of all complaints against paralegals in the province.

It was the intention of Convocation to debate these recommendations on January 12, 1995. Your Committee met on January 12, 1995 and had an opportunity to discuss the question of s. 50 prosecutions with the past Chair of the County and District Law Presidents' Association.

Your Committee has decided to consider a detailed proposal which will be prepared by the CDLPA. Your Committee, therefore, recommends that the discussion of s. 50 prosecutions at Convocation be deferred.

ALL OF WHICH is respectfully submitted

DATED the 27th day of January, 1995

P. Peters
Chair

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

Item B.-1. - List of Prosecutions.

(page 3)

THE REPORT WAS ADOPTED

27th January, 1995

CALL TO THE BAR

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

Kinga Katalin Sugar	35th Bar Admission Course
Daniel Philippe Bourque	36th Bar Admission Course

.....

DISCIPLINE COMMITTEE

Frederick Bernard SUSSMAN - Ottawa

The Secretary placed the matter before Convocation.

Messrs. Strosberg, O'Connor and Krishna and Ms. Graham withdrew for this matter.

Mr. Scott did not participate.

Mr. Neil Perrier appeared for the Society. The solicitor appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 8th September, 1994, together with an Affidavit of Service sworn 14th October, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 9th September, 1994 (marked Exhibit 1). The Acknowledgement, Declaration and Consent signed by the solicitor on 26th January, 1995 was marked Exhibit 2. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

David W. Scott, Q.C., Chair
 Vern C. Krishna, Q.C.
 Mrs. Netty Graham

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

Neil Perrier
for the Society

FREDERICK BERNARD SUSSMANN
of the City
of Ottawa
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 6, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 4, 1994, Complaint D2/94 was issued against Frederick Bernard Sussmann alleging that he was guilty of professional misconduct.

The matter was heard in public on June 6, 1994 before this Committee composed of David W. Scott, Q.C., Chair, Vern C. Krishna, Q.C. and Mrs. Netty Graham. Mr. Sussmann attended the hearing and was not represented. Neil Perrier appeared on behalf of the Law society.

DECISION

The following particular of professional misconduct was found to have been established:

Complaint D2/94

2. a) While acting for a wife in a matrimonial proceeding, he counselled his client to breach the terms of a court order respecting access.

REASONS FOR DECISION

Background

The solicitor, Frederick Bernard Sussmann, was called to the Bar of the Province of Ontario on the 15th of June 1973. Prior to that date he was a member of the Bar of the State of New York, U.S.A., and had been since March 1944. He came to Canada to join the Faculty of Law at the University of Ottawa and upon his retirement took up practice in the City of Ottawa. The complaint in the case arises out of his representation of Jacqueline Joubarne. The solicitor is charged that:

"while acting for a wife in a matrimonial proceeding, he counselled his client to breach the terms of the Court Order respecting access."

The Facts

On November 14, 1991 the Honourable Mr. Justice McWilliam of the Ontario Court (General Division) at Ottawa issued an Order in a proceeding in which one Daniel Joubarne, the husband, was the Applicant and Jacqueline Joubarne, the wife, the Respondent. The Order was to the effect, *inter alia*, that the wife would have custody of the two children of the marriage, Jessie St. Anne Joubarne born February 29, 1980 (the child of the wife's previous marriage) and Jill Samantha Joubarne born December 28, 1983, and that the husband would have, in effect, weekend access to both children in accordance with the specific terms of the Order. The Order itself is Exhibit 1, Tab 1 of the Book of Documents filed.

In accordance with the terms of the Order for access the children were with their father on Saturday and Sunday, November 31 and December 1, 1991. On Tuesday, December 3, the solicitor wrote to Richard B. Bowles, the solicitor for the husband (Exhibit 2, Tab 2), remonstrating with him with respect to his client's behaviour during access and concluded that:

27th January, 1995

"The further consequence is that, as soon as I can get the necessary affidavit from my client, I will prepare a motion for an interim restraining order barring your client's access to both children."

Some ten days later on December 13, 1991 the solicitor again wrote to Richard B. Bowles (Exhibit 2, Tab 2). His letter contained the following statement:

"The purpose of this letter is to tell you that I have instructed my client not to permit your client access to the children this coming weekend, or at any time until I can make my application for a temporary restraining order, and that you had better advise your client accordingly, since originally he was to have had access this coming weekend."

The solicitor for the husband responded (Exhibit 2, Tab 3) on the same day, which was a Friday, complaining about the propriety of the position adopted by the solicitor having in mind his obligations as an officer of the Court and the terms of the existing Order. It is clear from the evidence that was tendered at the Hearing that, as a result of the position adopted by the solicitor and the advice which he gave to his client, the husband was denied access to his two children on the weekend in question, that is to say the weekend of December 14 and 15, 1991.

One wonders, as did Mr. Bowles, the solicitor for the husband, why an application was not made expeditiously to vary the Order for Access if there was some complaint about the husband's behaviour. The failure to make such a variation application, in spite of threats to do so, was never satisfactorily answered by the solicitor, either in writing at the time, or in his evidence at the Hearing. On December 16, 1991 he wrote to Mr. Bowles (Exhibit 2, Tab 4) and, while asserting that he had prepared an affidavit in support of a variation application and had it sworn by his client by December 8, 1991, he did not launch the application. Accordingly, the access referred to did not take place. In written communications the solicitor made a rather self-serving effort to suggest that, far from being obligated to move promptly to vary the Order, he having put the husband's solicitor on notice of the planned denial of access, the onus somehow shifted and rested on Mr. Bowles, on behalf of the husband, to seek the intervention of the Court to confirm the access entitlement.

The next activity of record is in August 1992 at which time Mr. Bowles, on behalf of the husband, wrote to the solicitor and indicated that the husband now wished to continue with access only to the child Jill in view of the difficulties surrounding the husband's relationship with Jessica (who is not his natural child). In his letter outlining this proposal (Exhibit 2, Tab 5), Mr. Bowles requests that the solicitor secure the approval of his client to this arrangement. Far from complying, or even suggesting some viable alternative, the solicitor, on August 24, 1992, wrote to Mr. Bowles (Exhibit 2, Tab 6) and again made it quite clear that he was advising his client to ignore the terms of the outstanding access Order of November 14, 1991. Specifically, in this letter he notes at Point 4:

"Be advised that my client's position is that your client will be granted no further access to either child, and no further support payments for either will be accepted. This position was adopted by my client in consultation with me following consideration of your client's behaviour...."
[emphasis added]

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As a result of this communication Mr. Bowles, under cover of his letter dated September 29, 1992 (Exhibit 2, Tab 9), reported the solicitor to the Law Society. At the same time he made application to the Court for appropriate relief. On October 5, 1992 the Honourable Mr. Justice Desmarais granted an Order providing the husband with interim access to the child Jill in accordance with the husband's proposal. By the terms of that Order (Exhibit 2, Tab 10) the wife was required to pay the costs of the proceedings surrounding the granting of the Order. They were fixed in the amount of \$750 and ordered to be paid forthwith.

Certain matters are clear from a factual standpoint. In the first place it is conceded that the solicitor counselled his client to disobey the terms of the Order of the Honourable Mr. Justice McWilliam of November 14, 1991. Not only is this apparent from his written communications, but he admitted the same in evidence. Furthermore, it is equally clear that his client followed his advice, as she might well have done, it having been proffered by an officer of the Court. Mr. Bowles testified that access was denied during the weekend of December 14 and 15, 1991. Furthermore, Judge Desmarais concluded that access had been denied, as threatened, on the second occasion in August 1992.

Finding

The solicitor is charged in the complaint (Exhibit 1) that he counselled his client to breach the terms of the Court Order respecting access. It would appear self-evident, from the above recitation of the facts and the contents of the relevant documents together with the testimony both of the solicitor and Mr. Bowles, that the allegation is made out. What is the solicitor's response? He advances essentially three reasons why a finding of professional misconduct ought not to be made against him:

- (1) The Honourable Mr. Justice Desmarais made a finding, binding upon this Tribunal, that he (the solicitor) "had not intentionally disobeyed the Court Order" (Exhibit 2, Tab 16);
- (2) that whatever counsel the solicitor may have offered the wife there was at no time "a physical denial of access" to either of the children; and
- (3) in any event it was always the solicitor's intention to apply to vary the interim Order for access and thus the counsel which he offered his client was not contemptuous, but was merely affected with the delays in bringing the requisite application.

Dealing with each of the three issues in turn, with respect to the finding of Mr. Justice Desmarais, it is clear, on all of the evidence, that it was not the intention of the presiding Judge in concluding as he did that the solicitor ought not to be ordered to pay the costs personally, that somehow he was thereby absolved of responsibility for the advice which he gave. Whether or not costs are to be awarded against a solicitor personally is a matter of judicial discretion. The Judge exercised his discretion in favour of the solicitor and declined to order the costs to be paid by him personally. It is not possible to draw from this the conclusion that the Trial Judge intended to find for all purposes that the solicitor did not counsel the wife to disobey the terms of a Court Order. Indeed, Mr. Bowles testified, and the solicitor confirmed, that the Judge indicated that matters of professional misconduct were more properly dealt with by the Law Society. This observation negatives any suggestion that he was intending to make a finding which would be binding on other Tribunals. Neither the doctrine of *res judicata* nor issue estoppel apply. Accordingly, the Committee concludes that there is nothing in Mr. Justice Desmarais' Order with respect to the costs in the access proceeding which could impair the Committee's jurisdiction to make a finding with respect to counselling the disobedience of a Court Order.

27th January, 1995

Secondly, the solicitor, in his evidence, repeatedly asserted that at no time in the period of almost a year in which he was counselling his client with respect to the disobedience of the Order was there ever a "physical denial of access." While he did not articulate the meaning of this phrase in which he obviously placed great stock, it is quite clear from the whole of his evidence that what the solicitor meant was that he indeed counselled the wife not to permit access and communicated the wife's decision not to permit access to the solicitor for the husband, but on those occasions (if there were any) where the husband went out to her home and physically insisted on his right to access, access was not "physically" denied. This is tantamount to saying that the position of the wife was that she would not voluntarily afford access but if there were a threat of physical force access would be accommodated. This is a most provocative response for the solicitor to make in the circumstances. In the first place he is not charged with disobeying an access Order. He is charged with counselling his client to disobey an Order. He has admitted that he so counselled her. He intended that his client would take his advice, that he would then communicate her position to the solicitor for the husband and that the husband would not, in the interests of the children, insist on taking physical possession of them. The object of the advice was to frustrate the Order of the Court. It had its effect. If the husband had secured access by physical intervention in the face of his wife's refusal to peaceably grant access and indeed voluntarily deliver up the children, it would have been a frustration of the intent of the Court's Order as well. In either case, as an officer of the Court, the solicitor's behaviour was reprehensible.

Thirdly and finally, the solicitor argued that he had always intended to bring a variation application and had simply never done so. This position is equally untenable. He first denied access to the children on his client's behalf on December 13, 1991. The first (and apparently only) document which he filed in support of a variation of the Order was filed some seven months later on July 17, 1992. His explanations as to why he did not make a variation application are groundless. Whether they were based on his being overburdened with work or his somewhat convoluted theory as to the onus being on the husband to apply to the Court, they provide no escape. The circumstances in which a solicitor may counsel his client to ignore the terms of a mandatory order are, not surprisingly, extremely confined. In a decision of a Discipline Committee of the Law Society in the matter of Carole Curtis (decided December 29, 1993) the Committee noted the following on the subject at page 19:

"The principle appears to be reasonably, clearly established, and we emphasize that the circumstances in which the counselling of the disobedience of a court order can be countenanced are extremely narrow, have implicit in them the elements of reasonable and honest belief of there being imminent risk or danger to a Child, and co-exist with the requirement that there be an immediate application to a court to have the issues determined forthwith. Once that application is made and the facts have been presented before a court of competent jurisdiction however briefly, if that court refuses to act to change an outstanding order, then the obligation of the client is to "trust in the efficacy of the legal system" and adhere to the court order, and then if so advised, to seek a full hearing for a permanent change."
[emphasis added]

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The solicitor did not suggest that there was any imminent risk or danger to the child which might have justified his behaviour. Furthermore, as pointed out by counsel for the Law Society, not only was there no immediate application to vary, there was no application by the solicitor at all. Indeed, the Committee is of the view that not only was there no application to vary, it is clear that the solicitor never really intended to make an application so long as his assertions with respect to his client's decision not to follow the dictates of the Order had the intended effect upon the husband.

The complaint has accordingly been established. There will be a finding of professional misconduct against the solicitor. In particular, we find that, while acting for the wife in a matrimonial proceeding, the solicitor counselled his client to breach the terms of a Court Order respecting access.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Frederick Bernard Sussmann be suspended for a period of one month.

REASONS FOR RECOMMENDATION

The solicitor has been a member of the practicing Bar for over fifty years. He is not a young man. He suffers from arthritis and diabetes. It was obvious from evidence of his infirmity at the hearing that he is not very well. These circumstances no doubt offer a basis for mitigation of whatever the appropriate penalty in the ordinary case might otherwise be. Indeed, counsel for the Law Society invited the Committee, upon a finding of professional misconduct, to consider a reprimand as modest as one in Committee. Your Committee's instinct is to be fair and reasonable and not unnecessarily punitive, having in mind the circumstances in which the solicitor finds himself. Notwithstanding, it is your Committee's view that behaviour of the kind which took place in the present case is extremely serious and must be met with a meaningful sanction.

As members of the Bar we are all officers of the Court and the burden of responsibility as such is no greater than when resting on the shoulders of the advocate who appears before the Courts. There can be no behaviour more disruptive to our system of justice and more likely to bring its administration into disrepute than a lawyer, while representing a party to a dispute, counselling his or her client to disobey the clear, unequivocal terms of a Court Order. To do so is to undermine the Court's effectiveness, contaminate the esteem with which it is held in the eyes of the citizenry and foment the law of the jungle. Behaviour of this kind is particularly troubling by reason of the highly undesirable example which it provides to ordinary citizens, lawyers and indeed law students. The matter is further exacerbated by the fact that the solicitor has spent a good portion of his career as a member of the faculty at the University of Ottawa Law School. He identifies himself as Professor of Law Emeritus in the Faculty of Law on his letterhead. The indignity of a law teacher engaging in such behaviour is self-evident.

27th January, 1995

In his own defence the solicitor points firstly to his otherwise clean disciplinary record at the Law Society. Secondly, he relies on the fact that he was not actively engaged in the practice of family law and that indeed he had only had two family law cases before this one. With respect to this latter point it need only be observed that, in spite of his physical infirmities, the solicitor is an intelligent student of the law who has spent a considerable portion of his adult life teaching it. There can be no doubt that he was fully aware of the ramifications of what he was doing at the time. He clearly lost sight of his role as an officer of the Court and allowed his own perception of his skill in the adversarial arena to take hold. He thereby did a disservice not only to the public, to his client and to his client's children, but also to himself.

Were it not for the solicitor's age and his lengthy career, the penalty recommended would be far more severe. In all of the circumstances we recommend that the solicitor be suspended from the practice of law for a period of one month.

ALL OF WHICH is respectfully submitted

DATED this 8th day of September, 1994

David W. Scott, Q.C.
Chair

It was moved by Mr. Topp, seconded by Mr. Campbell that the Report be adopted.

There were submissions by Mr. Sussman who took issue with the conclusion of the Report that he was guilty of professional misconduct.

Mr. Perrier made submissions in support of the finding of professional misconduct.

Mr. Perrier asked that an amendment be made to the Report on page 6, last sentence of the second paragraph, that the date of "December 29, 1993" be changed to "September 29, 1993".

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

The Report as amended was adopted.

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

It was moved by Mr. Somerville, seconded by Ms. Weaver that the Recommendation as to Penalty be adopted, that is, that the solicitor be suspended for a period of 1 month.

Mr. Perrier made submissions in support of the recommended penalty.

The solicitor requested that if he were suspended that the suspension commence on June 1, 1995 to enable him to take care of some urgent matters.

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

It was moved by Mr. Yachetti, seconded by Ms. Legge that the solicitor be reprimanded in Convocation.

Not Put

The Recommendation as to Penalty was adopted.

It was moved by Ms. Curtis, seconded by Ms. Palmer that the commencement date of the suspension be March 1, 1995.

Withdrawn

Counsel, the solicitor, the Reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 1 month commencing June 1, 1995.

Counsel and solicitor retired.

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Convocation went in camera until lunch.

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

The Treasurer and Benchers had as their guest for luncheon Mr. Marc Cousineau of the Association des juristes d'expression francaise de l'Ontario.

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

The Treasurer, Bastedo, Blue, Bellamy, Bragagnolo, Brennan, R. Cass, Copeland, Cullity, Curtis, Elliott, Feinstein, Finkelstein, Goudge, Graham, Hickey, Howie, Jarvis, Kiteley, Krishna, Lamont, Lawrence, Lax, Legge, McKinnon, Manes, Murray, O'Brien, 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 - COMMITTEE APPOINTMENT

It was moved by Mr. Feinstein, seconded by Mr. Lamont THAT Tom Carey be appointed as a member of the Professional Conduct, Legal Education and County & District Liaison Committees.

Carried

AGENDA - Reports or Specific Items Requiring Convocation's Consideration and Approval

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of January 12, 1995

Mr. Bastedo presented Item B.-4. & 5. re: Suspensions for Convocation's approval.

27th January, 1995

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 12th of January, 1995 at 10:30 a.m., the following members being present: T.G. Bastedo (Chair), R.W. Murray (Vice Chair), R.W. Cass, A. Feinstein, N. Finkelstein, P. Furlong, M. Moliner, P.B. Pepper and M. Weaver. Also in attendance was Richard Vrooman, a Member of the Profession. Staff in attendance were D.A. Crosbie, D.E. Crack, D.N. Carey, and M. Angevine.

B.
ADMINISTRATION

1. FINANCIAL REPORT

The Director of Finance presented a highlights memorandum for the General Fund and the Lawyers Fund for Client Compensation for the five months ended November 30, 1994. [Appendix A]

Approved

2. REPORT OF SUBCOMMITTEES

(a) *Administration Subcommittee*

i) No Report

(b) *Report of the Priorities and Planning Subcommittee*

i) Proposal on the Monthly Financial Reporting Policy [attached as Appendix C]

Approved

ii) Budget Process - By a memorandum dated December 21, 1994 (copy attached as Appendix D)

Approved

(c) *Report of the Facilities Subcommittee*

i) Space Planning Report [attached as Appendix E]

Approved

3. REVIEW OF ALL LAW SOCIETY PROGRAMS AND ACTIVITIES IN LIGHT OF THE ROLE STATEMENT

By a joint memorandum from the chairs of the Research & Planning Committee and the Priorities and Planning Subcommittee, each Committee has been directed to review its "activities, programs and proposals" in light of the Law Society Role Statement.

A copy of the letter dated December 10, 1994 addressed to Mr. Bastedo was before the Committee and the Chair appointed a committee comprising Messrs. Murray, Wardlaw and the Chair.

27th January, 1995

4. SUSPENSION OF MEMBERS - LATE FILING FEE

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

In all cases all or part of the late filing fee has been outstanding for four months or more.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on January 27, 1995 if the late filing fee remains unpaid on that date.

Note: Motion, see page 265

Approved

5. SUSPENSION OF MEMBERS - N.S.F. CHEQUE

There are many members who paid their Annual Fees or their Errors and Omissions Insurance levies with cheques which were subsequently dishonoured by the bank.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on January 27, 1995 if the fees or levies remain unpaid on that date.

Note: Motion, see page 265

Approved

C.
INFORMATION

1. LEGAL MEETINGS AND ENTERTAINMENT

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

January 5, 1995	Lawyers' Club Dinner Convocation Hall
February 2, 1995	York Law Association Convocation Hall
February 16, 1995	Lawyers' Club Dinner Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 12th day of January, 1995.

T. Bastedo
Chair

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

- Item B.-1. - Memorandum from Mr. David Crack to the Chair and Members of the Finance and Administration Committee dated January 6, 1995 re: Financial Highlights for November 1994. (Appendix A)
- Item B.-2.(b)(i) - Memorandum from Mr. David Crack to the Senior Management Committee dated January 5, 1995 re: Priorities and Planning - Monthly Financial Reporting Policy. (Appendix C)
- Item B.-2.(b)(ii) - Memorandum from Mr. Abe Feinstein, Chair, Priorities and Planning Subcommittee, David Crack, Director of Finance and Administration to Committee Chairs and Secretaries dated December 21, 1994 re: 1995/96 BUDGET. (Appendix D)
- Item B.-2.(c)(i) - Facilities Subcommittee Report dated January 5, 1995. (Appendix E)

It was moved by Mr. Bastedo, seconded by Mr. Feinstein that Item B.-4. & 5. be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

MOTION TO SUSPEND - FAILURE TO PAY LATE FILING FEE

It was moved by Mr. Bastedo, seconded by Mr. 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 January 27, 1995 and 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 - N.S.F. CHEQUES

It was moved by Mr. Bastedo, seconded by Mr. Feinstein THAT the rights and privileges of each member who paid the Annual Fees or the Errors and Omissions Insurance Levy with cheques which were subsequently dishonoured by the bank and whose name appears on the attached list be suspended from January 27, 1995 and until the necessary fee or levy 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)

PROFESSIONAL STANDARDS COMMITTEE

Meeting of January 12, 1995

Mr. McKinnon presented Item A.-A.1. re: Impact of Admission Policies and Item A.-A.2. re: Real Estate Checklist, for Convocation's approval.

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 12th of January, at 3:00 p.m., the following members being present: C. McKinnon (Chair), R. Cass, P. Furlong, M. Weaver. D. Lamont was also in attendance.

Also Present: N. Amico, S. Kerr, S. McCaffrey, P. Rogerson.

A.
POLICY

- A.1. THE IMPACT OF ADMISSION POLICIES ON THE STANDARDS OF THE PROFESSION
- A.1.1. Since October, the Committee has been discussing the quality of service being provided to the public, the impact of current admission policies, the numbers of recently called lawyers apparently intending to establish their own practices, and the implications of the numbers of recently called lawyers participating in the Practice Review Programme. Of the 136 members currently authorized for participation, 11 were called to the Bar since (and including) 1989, one of whom was called in 1994 and admitted on condition that he participate in the Programme. The Committee expressed concern that these members were able to accumulate in such a brief span of their career a history with the Law Society that warranted their referral to the Programme.
- A.1.2. Statistics from the Practice Advisory Service indicate that, in the past year, 118 student members and members in their first two years of practice have attended the Start-Up Workshop, apparently with the view to establishing their own practices.
- A.1.3. Challenge examinations constitute a subject which the Committee viewed as being within its mandate for discussion. Accordingly, and following lengthy discussion, the Committee concluded that there is sufficient anecdotal evidence to suggest that the uneven educational experience of students entering the Bar Admission Course warrants examining whether there is a need for challenge examinations for law school graduates seeking admission to the Bar Admission Course.
- A.1.4. Staff were asked to obtain statistical data correlating year of call with complaints and claims, and providing information about the individual's practice circumstances (sole practitioner, associate, partner) at the date of error or complaint. Some preliminary complaints data was provided to the Committee, and further complaints statistics will be forthcoming for future meetings of the Committee.
- A.1.5. Statistics were not available from the Lawyers Professional Indemnity Company because of limited resources. Your Committee recommends that the Board of LPIC be urged to set aside such resources as are necessary, to be able to provide the statistical data requested.

A.2. REAL ESTATE CHECKLIST - REVISED

- A.2.1. In April 1994, the Committee decided that the Residential Real Estate Checklist be revised in order to retain its relevance to practice. The sub-committee, chaired by Donald H.L. Lamont, Q.C. submitted to the Professional Standards Committee, its draft update. The Committee recommends the approval of the revised Residential Real Estate Checklist as presented.
- A.2.2. The Committee wishes to express its thanks to Donald H.L. Lamont, who chaired the sub-committee and to Craig Carter, Brenda Duncan, Ernest Goodman, Miriam Kelly, James J. Wardlaw, Mary Weaver, Caron Wishart and Frances Wright the sub-committee members, for their excellent work and the efficiency with which the sub-committee was able to complete this task.

B.
ADMINISTRATION

B.1. REORGANIZATION OF THE AUDIT, COMPLAINTS, DISCIPLINE AND STANDARDS DEPARTMENTS

- B.1.1. The Discipline Committee, Policy Section, at its meeting of May 12, 1994, established a Sub-Committee to monitor the progress of structural, organizational and procedural changes being contemplated by staff, for the Complaints, Audit and Discipline departments.
- B.1.2. The reorganization proposals, at present, address two issues:
- a) the development of computer information systems relating specifically to the departments of the Secretariat, including an on-line, integrated management information database system accessible to, and maintained by, the four departments noted above;
 - b) the streaming of complaints into three distinct "units", namely Resolution Services, Quality of Service and Discipline Investigations, to permit a sliding scale of response to complaints based upon their nature, add flexibility and efficiency into the Complaints Department's response to the array of complaints received, and ensure the best, and most cost-effective, allocation of investigative resources both within the Complaints Department and across the Complaints, Audit and Discipline departments.
- B.1.3. The streaming of the complaints process and, particularly, the development of a Quality of Service Unit, means greater interaction between that Unit and the Professional Standards Department, in order to address more effectively quality of service concerns. The emphasis will be on remedial response and timely disposition. Interaction with the Standards Department will ensure that a consistent response is being provided by the Law Society to complaints of this nature, and should assist in identifying, at an earlier point in time, lawyers who may be appropriate candidates for the Practice Review Programme.
- B.1.4. Implementation of the quality of service unit is likely to commence in the spring of 1995; further reports will be provided as the reorganization progresses.

B.2. FILE CLOSURES - PRACTICE REVIEW PROGRAMME

- B.2.1. Two files were closed based on the members' successful completion of the Practice Review Programme. Each member's practice was initially assessed by a reviewer, who made recommendations for the improvement of the practice. Both members also were attended by staff on several occasions to provide further assistance. In the case of one of the members, a review panel of benchers was held, at which time additional recommendations were made. In addition to implementing the recommendations made, the other member shifted his practice focus. It appears that the implementation of the recommendations made to members during the Practice Review Programme have been of benefit to the members.
- B.2.2. Two Practice Review files were closed based on the fact that the members are no longer practising law. In the first instance, the member began participating in the Programme in October of 1992, based on a referral from the Complaints department. A reviewer and staff worked with the member to assist in the better operation of the practice. The member was quite amenable to the recommendations made in the course of the Programme. In October, 1994 the member closed her the practice and moved out of province.
- B.2.3. In the second instance, the member was referred to the Programme in 1988. A reviewer attended at the member's practice in January, 1989. The member Review file was placed in abeyance in September, 1989 when he became involved with the Audit and Discipline process. In April, 1992 the solicitor was found guilty of professional misconduct and was suspended for six months. The member's file with the Programme remained in abeyance until his reinstatement. In March 1993, November 1993 and April, 1994 staff met with the member to provide assistance with the member's practice. The solicitor was and has been in dire financial constraints, has been suspended since November 1993 and faces Disciplinary action for practising while under suspension. All attempts to locate and communicate with the solicitor have been unsuccessful. This information has been communicated to the Staff Trustee's Office. Both members' files have been closed and staff asked to monitor the files yearly in the event that the members return to practice, at which time the files can be re-opened, if appropriate to do so.
- B.2.4. One Practice Review file was closed based on the member's unwillingness to participate in the Practice Review Programme. The member was referred by a Complaints Review Commissioner. At the time of the authorization the member had 2 complaints and 10 potential LPIC claims. The solicitor, who was called to the Bar in 1965, was invited to participate in the Programme in January, 1994. The member wrote protesting his referral and requesting further information, which was provided. In October, 1994 the solicitor declined to participate. The member's file has been referred to the Staff Committee to decide what alternatives, if any, should be considered by the Law Society.

Note: Referred back to Committee, see page 271

C.
INFORMATION

C.1. REVIEW OF ACTIVITIES, PROGRAMS AND PROPOSALS IN LIGHT OF LAW SOCIETY
ROLE STATEMENT

C.1.1. When Convocation adopted the Role Statement in October, 1994, it directed all committees to review their activities, programs and proposals in light of the Role Statement, as a result of a recommendation made by the Research and Planning Committee. The review is to result in a report to the Research and Planning Committee by September, 1995, addressing specific issues as identified by that Committee. A letter from the Chairs of the Research & Planning Committee and the Priorities and Planning Subcommittee, identifying the matters to be considered, a copy of the Role Statement and the revised final report of the Subcommittee on the Role of the Law Society, as adopted by Convocation, was provided to Committee members for their consideration. Staff will draft, for the March meeting, at least an initial summary of the current and future programs of each department, the numbers of staff, present and proposed, in the departments, and the current budgets of the departments. The Committee will begin its review at the March meeting.

C.2. SPECIAL COMMITTEE ON REFORMS IMPLEMENTATION

C.2.1. The Professional Standards Committee was established in part because of Convocation's recognition that the discipline process was not the most effective means of addressing competency issues. The Special Committee on Competence, in its April, 1986 report, made the following observations:

C.2.2. Incompetence, as a specie of professional misconduct, is properly within the general subject matter of discipline in our system of self-governance. It is distinct, however, from those discipline cases involving dishonesty or lack of integrity.

C.2.3. The traditional discipline process, with its quasi-criminal trappings and its formal, rigid procedures, is rarely successful in exposing the true nature or extent of the underlying problem. The traditional discipline sanctions--reprimand, suspension and disbarment--are found to be blunt instruments which are rarely appropriate in and of themselves in dealing with a solicitor whose difficulty arises from a complex of circumstances, often including deficient or badly organized office systems and limitations in personal awareness or professional skills.

C.2.4. The Practice Review Programme was devised to address these perceived shortcomings in the Law Society's response to competency problems, but that Programme is voluntary in nature, because the Law Society lacks statutory power to conduct random inspections or require members to participate in peer review.

C.2.5. As a result of recommendations made by the Professional Standards Committee in March, 1990, the Special Committee on Reforms Implementation proposed to Convocation that the Law Society seek amendments to the *Law Society Act* which would provide for the regulation of professional standards of competence by means of a mandatory peer review programme, and through random practice reviews. Convocation approved the proposals, and the draft regulations are in the process of being reviewed by a joint Benchers/staff committee, for submission to Convocation and, thereafter, to the provincial legislature.

C.2.6. In light of the insurance crisis, the implementation of proactive loss prevention measures becomes even more important. Random practice reviews, and mandatory peer review are two such measures. The Committee will be reviewing the November, 1991 report of the Special Committee on Reforms Implementation, approved by Convocation on February 28, 1992, in preparation for the discussion of the Law Society's Role Statement in March.

C.3. PRACTICE ADVISORY SERVICE - STATUS REPORT

C.3.1. The volume of calls received in 1994 increased from 618 in September to over 800 in November, many of them engendered by the Insurance Task Force report, particularly with respect to retirement from the profession. Current enquiries relate to the new transaction levy, which the profession assumed to be in force January 1, 1995. The volume of calls on this issue is expected to decrease as a result of members receiving the LPIC levy notice for January-June, 1995.

C.3.2. Felecia Smith participated on an ethics panel at a seminar on Immigration, in November; Dana Dymont has now settled into the department and, in two weeks in November, responded to 127 enquiries.

C.3.3. Workshops on Starting a Law Practice are underway in the Bar Admission Course. In Toronto, 195 students registered for the December program, and the Workshop is being presented in January in both Ottawa and London.

C.4. PROFESSIONAL STANDARDS - DEPARTMENTAL REPORT

C.4.1. The review panel scheduled for November was cancelled due to the unavailability of Programme participants, and the December review panel examined only one participant's practice. Although technically the review panels can proceed in the absence of the scheduled Programme participants, experience shows the process is more effective if participants are present. Benchers Ian Blue and Marie Moliner sat as review panellists in December; their assistance is greatly appreciated.

C.4.2. The Director of the department has been asked to join the Mandatory Continuing Legal Education Sub-committee, because of its research into the relationship between competence, insurance claims, complaints and legal education. The issues being explored should assist the Professional Standards Department in better addressing competency problems that arise in the particular context of the Practice Review Programme, and the ultimate recommendations of the sub-committee will have direct relevance for Programme participants, many of whom do not engage in continuing legal education.

27th January, 1995

- C.4.3. The Law Society is represented on two programmes designed to provide assistance to the profession: the LINK-Lawyers' Assistance Programme, and the Ontario Bar Assistance/Bar Alcoholism Program. Both programmes assist with a wide range of possible problems, although OBAP is better known for its expertise in addressing alcohol and drug abuse, and will actively intervene with members known to be experiencing difficulties. LINK's statistics show a direct relationship between increased advertising and increased usage of the Programme by the profession. Informal and anonymous comments from members indicate a great appreciation for the provision of these services.
- C.4.4. The requalification assessment process began in the fall of 1994, with the distribution to the profession of the Qualification Status form. The form was to be completed and returned by December 31, 1994. Staff are now in the process of identifying those responses which may indicate some question as to a member's qualification status, for review by a committee composed of Benchers and staff. If it appears a member is not maintaining qualified status, the member will be so advised, to be able to take whatever steps are necessary to requalify. It is anticipated that the committee will meet as soon as the review of forms is completed.

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995.

C. McKinnon
Chair

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

Item A.-A.2. - Revised Residential Real Estate Checklist. (pages 1 - 61)

It was moved by Mr. McKinnon, seconded by Ms. Weaver that Items A.-A.1. & A.2. be adopted.

It was moved by Ms. Graham, seconded by Ms. Weaver that Item B.-B.2.4. re: File Closures be referred back to the Committee.

Carried

Items A.-A.1. & A.2. were adopted.

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

MOTION RE: SCRUTINEERS

It was moved by Mr. Manes, seconded by Mr. Finkelstein THAT Nicole Tellier, David McLean, Gregory Mulligan and Margaret Buist all members in good standing of this Society be appointed scrutineers for the 1995 election of Benchers.

Carried

27th January, 1995

REPORT OF THE BOARD OF LAWYERS PROFESSIONAL INDEMNITY COMPANY

Meetings of November 23, December 9, 1994 and January 12, 1995

Mr. Strosberg presented Item 13 re: Reduction of base levy for 1994/95 Bar Admission Course graduates for Convocation's approval.

A debate took place on the issue of the reduction of the base levy.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The BOARD OF LAWYERS' PROFESSIONAL INDEMNITY COMPANY begs leave to report:

The Board of Directors has met on November 23, 1994, December 9, 1994 and January 12, 1995.

The current members of the Board are Messrs. Strosberg (Chair), Feinstein, Murray, Finkelstein, Wardlaw, Bastedo, Heins and Mesdames Elliott, Palmer and Salomon.

ITEM

1. The Board of Directors was increased to fourteen and a search is presently underway for four individuals to fill the remaining vacancies with emphasis being placed on candidates with Financial and Insurance qualifications
2. An Audit Committee has been struck composed of Messrs. Wardlaw, Finkelstein and Feinstein.
3. The firm of Deloitte & Touche has been retained as LPIC's auditors and Eckler & Partners as its actuaries.
4. The Chief Executive Officer commenced his duties at LPIC on December 5, 1994 and a Chief Financial Officer, Michelle Strom, C.A., commenced employment January 9, 1995.
5. LPIC has engaged the firm of Deloitte & Touche to do a complete review of its information and administration systems. The current systems are inadequate for LPIC and the professional liability program. LPIC's Board will be considering the recommendations of management and the consultant at its next meeting.
6. The policy of insurance for the members of the LSUC and the LSUC has been re-written with LPIC assuming responsibility from the individual member's deductible, ie: the group deductible has been eliminated. The existing Policy #90-001 was cancelled effective December 31, 1994 at midnight and the new Policy #95-001 made effective January 1, 1995 at 12:01 a.m. Policy #95-001 reflects the report of the Insurance Task Force as adopted by Convocation. Policy #95-002 has been issued to the Law Society of Upper Canada and will cover the Law Society, Benchers and employees as previously.
7. An information package consisting of the new policy #95-001 together with instructions and information re the tail levy, real estate transaction levy surcharge, civil litigation transaction levy surcharge, and volume levy surcharge is being prepared for mailing in February. The surcharges will be applicable to files opened after March 1st, 1995.

27th January, 1995

8. The reinsurance program for LPIC for 1995 is presently being marketed. The program is being placed with knowledgeable reinsurers who will assist in validating pricing for 1995 as well as operating LPIC in a "commercially reasonable manner". Key to placing the reinsurance program is the independence of LPIC and the pricing of the 1995 program. Reinsurers have confirmed that without LPIC and the current method of distribution costs for the program would be 15% to 20% higher.

9. A meeting has been held with the Ontario Insurance Commission advising them of the insurance program for 1995 and they are pleased with the progress to date.

10. Coverage for the Law Society of Newfoundland will be maintained subject to premium adjustment on expiry terms.

11. LPIC has already put in place some important initiatives:

- (i) it has established a customer services unit and will be announcing a toll free line for the use of all lawyers in Ontario. All inquiries will be handled by this unit. Over 1,200 phone calls were handled between January 9th through 12th regarding the levy notice.
- (ii) A claims repair unit has been established staffed by experienced practitioners who, where possible will resolve new claims at as early a stage as possible following their reporting.
- (iii) A tender package is being introduced for lawyers wishing to do LPIC legal work.

12. Convocation will be interested to know that legal fees in the last six months of 1994 have been reduced by \$4,000,000. An up-to-date analysis of fees by firms is attached.

13. LPIC Board of Directors considers that it would be appropriate to reduce the base levy for the 1994 and 1995 Bar Admission Course graduates to \$3,500 and requests concurrence of Convocation with this decision.

ALL OF WHICH is respectfully submitted

DATED this 19th day of January, 1995

H. Strosberg
Chair

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

Copy of the Analysis of Legal Fee Payments N Fund Year Onwards to S Fund Year. (3 pages)

It was moved by Mr. Scott, seconded by Mr. Brennan that the Society consider a graduated scale of reduction of the base levy in increments of \$600 starting in 1993.

Lost

ROLL-CALL VOTE

Bastedo	Against
Bellamy	Against
Blue	Against
Bragagnolo	Against
Brennan	For
Copeland	Against
Cullity	Against
Curtis	Against
Elliott	Against
Feinstein	Against
Finkelstein	Against
Graham	Against
Kiteley	Against
Krishna	Against
Lamont	Against
Lax	Against
Legge	Against
McKinnon	Against
Murray	Against
O'Brien	Against
D. O'Connor	Against
Palmer	Against
Peters	Against
Richardson	Against
Scott	For
Sealy	Against
Somerville	Against
Strosberg	Against
Thom	Against
Topp	For
Wardlaw	Against
Weaver	Against
Yachetti	Against

It was moved by Mr. Strosberg, seconded by Mr. Murray that there be a reduction in the base levy to \$3,500. for the 1994/95 Bar Admissions graduates.

Carried

ROLL-CALL VOTE

Bastedo	For
Bellamy	For
Blue	For
Bragagnolo	For
Brennan	For
Copeland	For
Cullity	For
Curtis	For
Elliott	For
Feinstein	For
Finkelstein	For
Graham	For
Kiteley	For
Krishna	For
Lamont	For
Lax	For
Legge	For
McKinnon	For
Murray	For
O'Brien	For
D. O'Connor	For
Palmer	For
Peters	For
Richardson	For
Scott	For
Sealy	For
Somerville	For
Strosberg	For
Thom	Against
Topp	For
Wardlaw	For
Weaver	For
Yachetti	Against

It was moved by Mr. Topp, seconded by Mr. Brennan that the County and District Liaison Presidents Association and the Canadian Bar Association-Ontario be invited to nominate representatives to the Board of LPIC.

It was moved by Mr. McKinnon, seconded by Ms. Curtis that the Topp/Brennan motion be tabled.

Carried

It was moved by Mr. Yachetti, seconded by Mr. Topp, that the Law Society retain an appropriate consultant selected by the County and District Liaison Presidents Association to determine whether private insurance is available as an alternative to LPIC.

Lost

ROLL-CALL VOTE

Bastedo	For
Bellamy	Against
Blue	For
Brennan	For
Copeland	For
Curtis	Against
Elliott	Against
Feinstein	Against
Finkelstein	Against
Graham	Against
Kiteley	Against
Krishna	For
Lamont	For
Lax	Against
Legge	For
McKinnon	For
Murray	Against
O'Brien	Against
Palmer	Against
Peters	For
Richardson	Against
Scott	Against
Sealy	Against
Somerville	For
Strosberg	Against
Thom	Against
Topp	For
Wardlaw	Against
Weaver	For
Yachetti	For

It was moved by Mr. Strosberg, seconded by Mr. Murray that the Report be adopted.

Carried

Ms. Kiteley reviewed a memorandum distributed to the Benchers from the Insurance Task Force Communications Committee re: Communications Strategy Update.

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of January 12, 1995

Mr. Copeland presented Item A.-A.1. re: Proposal that elected Benchers be paid, for Convocation's approval.

27th January, 1995

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 12th day of January, 1995 at 9:45 a.m., the following members being present: P. Copeland (Chair), N. Angeles-Richardson, J. Lax, and B. Luke.

Also present: F. Kiteley,

Staff: A. Singer, E. Spears and L. Talbot

A.
POLICY

- A.1 PROPOSAL THAT ELECTED BENCHERS BE PAID
- A.1.1 Your Committee submits a proposal that elected benchers be paid for the work they do on behalf of the Law Society. Attached to this Report is the proposal in detail which also contains background information and sets out the rationale for the recommended policy.
- A.1.2 This proposal would not take effect until after Bencher Elections in the spring of 1995.
- A.2 RECOMMENDATIONS
- A.2.1 The Women in the Legal Profession Committee recommends that Convocation:
- A.2.2 Approve a policy whereby elected benchers are remunerated for the work they do on behalf of the Law Society. The grounds for remuneration should be as follows:
- A.2.2.1 All elected benchers may choose, but are not obligated, to receive remuneration for time spent on certain Law Society activities.
- A.2.2.2 Convocation shall determine the categories of activities which will entitle elected benchers to be remunerated.
- A.2.2.3 Elected benchers shall be remunerated at the basic Legal Aid Hourly Tariff Rate for lawyers with less than four years' experience without regard to additional years of experience. The rate will also be adjusted for any statutory reductions in place.

Note: Motion, see page 280

B.
ADMINISTRATION

A.3 REVIEW OF PROGRAMS, ACTIVITIES AND PROPOSALS

A.3.1 The Committee considered, in a preliminary fashion, the review of its programs, activities and proposals. It has begun the process by asking the Committee Secretary to report back on the next Committee Day with a list of current programs, activities and proposals.

A.3.2 A more detailed review will be undertaken following the *Workshop on Principles of Program Evaluation* being held for Law Society Staff on February 17, 1995.

C.
INFORMATION

C.1 EQUAL JUSTICE FOR WOMEN & CHILDREN

C.1.1 In January 1992, the Family Law Tariff Subcommittee of the Legal Aid Committee was established for the purpose of reviewing the family law tariff and family law procedures. It produced a report entitled *Equal Justice for Women & Children*. That report compared Legal Aid Tariff treatment of Family Law practitioners (mainly women) and Criminal Law practitioners (mainly men).

C.1.2 Your Committee has considered studying the effects of differential Legal Aid Tariff Rates for lawyers practising in the areas of criminal and family law and the particular effect such rates have on the practices of female lawyers.

C.1.3 Your Committee intends to consider this matter in greater detail at a subsequent meeting and report to Convocation on its recommendations.

C.2 FEMINIST LEGAL ANALYSIS SECTION OF THE CBAO

C.2.1 The Committee noted that the Feminist Legal Analysis Committee of the CBAO has planned a "thought-provoking programme" for the CBAO Annual Institute on February 10, 1995. The topic is "*Feminist Legal Analysis: Is the Law Society Addressing the Needs of Women?*"

C.2.2 Current benchers, as well as candidates in the upcoming Bencher Election, have been invited to participate in this programme.

C.3 FOLLOW UP ON TRANSITIONS REPORT

C.3.1 Fran Kiteley addressed the Committee on the issue of the general progress in implementing the recommendation's of the Law Society's *Transitions Report*. A number of areas still require review by the Committee.

27th January, 1995

- C.3.1.1 In order to assist the Committee in completing this task, the following review procedure has been recommended:
 - C.3.1.1.1 Review the recommendations and confirm those that are within the jurisdiction of the Law Society.
 - C.3.1.1.2 Identify those recommendations which have or have not been implemented.
 - C.3.1.1.3 Assign priorities to those recommendations which should be acted upon.
 - C.3.1.1.4 Establish a time frame in which those recommendations can be implemented.
 - C.3.1.1.5 Develop a budget in order to ensure their implementation.
- C.4 The Committee also considered whether a follow-up study to the *Transitions* Report would be appropriate in light of the passage of Rules 27 and 28.

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995

P. Copeland
Chair

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

Item A.-A.1 - Copy of Report re: Proposal that Elected Benchers be Paid.
(24 pages)

It was moved by Mr. Copeland, seconded by Ms. Richardson that Item A.-A.1. be adopted.

Lost

ROLL-CALL VOTE

Bastedo	For
Bellamy	Against
Blue	Against
Brennan	For
Copeland	For
Cullity	Against
Curtis	For
Elliott	For
Feinstein	For
Finkelstein	Against
Graham	Abstain
Kiteley	For
Lamont	Against
Legge	Against
McKinnon	Against
Murray	Against
O'Brien	Against
D. O'Connor	Against
Palmer	For
Peters	For
Richardson	For
Scott	Against
Sealy	Abstain
Somerville	Against
Strosberg	Against
Topp	Against
Wardlaw	Against
Yachetti	Against

A Notice of Motion for the February Convocation was made by Mr. Strosberg, seconded by Ms. Peters that the issue of the proposal that elected Benchers be paid be placed on the ballot to the maximum of \$30,000 at minimum legal aid rates.

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meeting of January 12, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of January, 1995, at 8 a.m, the following members being present: L. Brennan (Chair), F. Carnerie, A. Feinstein, the Hon. A. Lawrence, R. Murray, J. Palmer, H. Sealy.

Staff: A. Brockett, E. Spears, L. Talbot.

A.
POLICY

A.1. LAWYER-MEMBERS ON STANDING COMMITTEES

A.1.1. In May, 1993, Convocation adopted a policy governing lawyer-members (non-benchers) who serve on Standing Committees of Convocation ("the 1993 policy").

A.1.2. Pursuant to the policy, in September 1993, Convocation appointed twelve lawyer-members and two supernumerary lawyer-members to various Standing Committees as set out below:

COMMITTEES	NUMBER OF LAWYER-MEMBERS	NUMBER OF SUPERNUMERARY LAWYER-MEMBERS
Research and Planning	2	--
Communications	1	--
Legal Education	1	1
Women in the Legal Profession	2	1
Professional Standards	1	--
Lawyers Fund for Client Compensation	2	--
Discipline (Policy Section)	2	--
Professional Conduct	1	--

A.1.3. The term of office for lawyer-members appointed under the 1993 policy is two years. Their terms will therefore expire on August 31, 1995.

A.1.4. In preparation for selecting a new group of lawyer-members to take office in September, 1995, your Committee sent a questionnaire to all benchers, seeking their views on the main elements of the 1993 policy. Nineteen questionnaires were returned with responses.

A.1.5. Several of the issues put to benchers concerned the term of office for lawyer-members. The responses to some of these issues were as follows:

A.1.5.1. That the term of office should be two years.
Yes: 7
No : 8

A.1.5.2. That the term of office should be four years.
Yes: 8
No : 6

- A.1.5.3. That the four-year term of office should coincide with the term of office of elected benchers.
Yes: 6
No : 3
- A.1.5.4. That the term of office should be staggered so that a certain number would be replaced each year.
Yes: 13
No : 2
- A.1.5.5. That the term of office of some of the current group of lawyer-members should be extended to August 31, 1996.
Yes: 9
No : 4
- A.1.6. Your Committee also received a report submitted by the lawyer-members themselves. One of its recommendations was that the term of office be extended to four years and staggered so that new lawyer-members would be appointed mid-way through the bench term.
- A.1.7. Your Committee had originally hoped to have a revised policy in place in time to govern the selection of lawyer-members who would take office in September 1995. However, the Committee has concluded that there is not adequate time to give proper consideration to the various policy issues raised in its own questionnaire and in the report from the lawyer-members.
- A.1.8. It was also noted that the review of Law Society governance and operations, referred to elsewhere in this report, might result in a change in committee structure. That being the case, the appointment of lawyer-members to existing committees in September 1995 for terms of two years or longer might be inappropriate.
- A.1.9. Your Committee therefore proposes that the term of office of all the current lawyer-members and supernumerary lawyer-members be extended by twelve months to allow for a thorough review of the 1993 policy in light of any changes in committee structure.
- A.1.10. Recommendations
- A.1.10.1. That the term of office of the lawyer-members and supernumerary lawyer-members appointed in September 1993 be extended from August 31, 1995 to August 31, 1996.
- A.1.10.2. That the current twelve lawyer-members and two supernumerary lawyer-members be invited to continue in office until August 31, 1996.
- A.1.10.3. That after the Spring 1995 bench election, the Research and Planning Committee take steps to fill any vacancies arising among the current group of lawyer-members, the replacements to hold office until August 31, 1996 and to be selected from among those who applied in 1993 .

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

C.1. PROGRAM REVIEW: RESEARCH AND PLANNING COMMITTEE

C.1.1. Your Committee has asked staff to compile a list of all its existing programs and activities as the first stage in the process of reviewing its programs in light of the Role Statement.

C.2. PROGRAM REVIEW: GENERAL: EVALUATION WORKSHOP

C.2.1. In order to achieve uniformity in the review process, the Secretariat is arranging a program evaluation workshop for all committee secretaries and management staff to be held on February 17, 1995.

C.2.2. Dr. Arnold Love, President of the Canadian Evaluation Society, will conduct the workshop.

C.2.3. Dr. Love will meet with your Committee on February 8, to ascertain what benchers would like to see accomplished as the outcome of the current review of programs, activities and proposals.

C.3. PROGRAM REVIEW: CONFERENCE TO ESTABLISH OBJECTIVES AND GOALS

C.3.1. As the conclusion of the program review exercise being undertaken by every committee, your Committee is considering a conference at which Convocation would adopt objectives and goals, consistent with the Role Statement, for the quadrennial term 1995-1999.

C.3.2. Your Committee has in mind a two-day conference in October 1995, at a cost of no more than \$50,000. The proposal would be included in the Committee's budget for 1995-1996.

C.3.3. A subcommittee will be appointed to develop the proposal and to bring specific recommendations to Convocation.

C.4. REVIEW OF LAW SOCIETY GOVERNANCE AND OPERATIONS

C.4.1. In its November 1994 report, your Committee suggested a need to undertake a major review of the management structure of the Law Society.

C.4.2. It subsequently became known that the Finance and Administration Committee had independently been considering the possibility of an operational review of the Law Society to be conducted by management consultants from Coopers and Lybrand, the Society's auditors.

C.4.3. At Convocation in November, it was reported that representatives of the Research and Planning Committee and the Finance and Administration Committee would be meeting with management consultants from Coopers and Lybrand to discuss the possibility of a review.

C.4.4. A Joint Subcommittee with representatives of the Research and Planning Committee and the Finance and Administration Committee has been established. It held its first meeting with the management consultants on January 11, 1995.

- C.4.5. It is proposed that the review should encompass matters such as,
- the role of the Treasurer, benchers and senior staff;
 - committee structure;
 - the functions of existing committees;
 - the distribution of staff and their functions;
 - the division of responsibilities as between benchers and staff.

C.4.6. The next step is for the management consultants to present a plan and a budget for their proposed review.

C.4.7. Your Committee understands that the mandate of the Special Committee on the Office of the Treasurer has been transferred to the Joint Subcommittee on the Review of Governance and Operations.

C.5. INTRA-PROFESSIONAL LIAISON COMMITTEE

C.5.1. Your Committee has set up a Steering Group to explore the possibility of establishing an Intra-Professional Liaison Committee. Its purpose would be to determine, in light of the Law Society's Role Statement, the role to be played by other professional groups in promoting the interests of lawyers.

C.5.2. Members of the Steering Group are:

For the Canadian Bar Association - Ontario:
William Simpson (Ottawa)
Michelle Fuerst (Toronto)

For the County and District Law Presidents' Association:
David Lovell (Owen Sound)
Johanne Morissette (Rockland)

For the Law Society:
Lloyd Brennan (Ottawa)
Fran Carnerie (Toronto)
Abraham Feinstein (Ottawa)
Ross Murray (Thunder Bay)
Hope Sealy (Toronto)
Michael Somers (Toronto).

C.5.3. A first meeting of the Steering Group is to be held at Osgoode Hall on February 2, 1995.

C.6. DISPUTE RESOLUTION IMPLEMENTATION SUBCOMMITTEE

C.6.1. The Dispute Resolution Implementation Subcommittee of the Research and Planning Committee is organizing a conference to be held on Friday, February 3, 1995 entitled, *The Working Group On Rules Of Professional Conduct For Lawyers Acting As Mediators*.

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C.6.2. The purpose of the *Working Session* is to gather together in small working groups, members of the profession who have substantial experience in mediation and to receive input concerning the drafting of Rules of Professional Conduct Governing Lawyer-Mediators.

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995

L. Brennan
Chair

It was moved by Mr. Brennan, seconded by Ms. Palmer that Item A.-A.1. be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

AGENDA - Additional Matters Requiring Debate and Decision by Convocation

COPELAND/RUBY MOTION

It was moved by Mr. McKinnon, seconded by Mr. Brennan that the Copeland/Ruby Motion be tabled.

Carried

REPORT OF THE REVIEW GROUP ON REAL ESTATE PRACTICE

The report was deferred to the February Convocation.

LEGISLATION AND RULES COMMITTEE

The report was deferred to the February Convocation.

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REASONS OF CONVOCATION - RE: JAMES FREDERICK HARRIS GRAY

The Reasons of Convocation in the matter of James Frederick Harris Gray were filed with Convocation.

THE LAW SOCIETY OF UPPER CANADA

REASONS AND DECISION OF CONVOCATION

27th January, 1995

IN THE MATTER OF the Law Society Act

AND IN THE MATTER OF James Frederick Harris Gray of the City of Toronto

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

Michael Brown	-	for the Society
Janet Brooks		
The applicant	-	representing himself

REASONS FOR DECISION

This is an application by James Frederick Harris Gray (the "Solicitor") for readmission as a member of the Law Society of Upper Canada.

FACTS

On March 26, 1992, the Solicitor was found guilty of professional misconduct following a hearing of Complaint number D117/91 on November 5, 1991, January 8, 1992 and July 23, 1992. The Complaint essentially alleged that between the years 1988 and 1991, the Solicitor misappropriated \$239,680.29 from his mixed trust account and from estate bank accounts, and transferred these monies to his law firm's general account to satisfy the ongoing obligations of his practice. At the time the Complaint was heard, the Solicitor had made full restitution of the monies misappropriated, and no clients suffered a loss in the end result.

On September 10, 1992, due to the presence of certain personal circumstances which were found to cause or contribute to his misconduct, the Discipline Committee recommended that the Solicitor be granted permission to resign rather than face disbarment. This recommendation was adopted by Convocation, and the Solicitor was granted permission to resign his membership from the Society on October 22, 1992.

In its Reasons for recommending that the Solicitor be granted permission to resign, the Discipline Committee stated:

"In making the joint submissions the Society did not ask that the Solicitor undertake not to seek readmission. Your Committee agrees that no such undertaking is required. We believe that he is fundamentally an honest and caring person. If he can demonstrate to a future Committee that he is cured, your Committee is of the view that, subject to requalification, there should be no problem with his reinstatement."

The Solicitor brought an application seeking readmission which was heard by the Admissions Committee on March 3, 1994. In a decision dated May 12, 1994, the Admissions Committee relied heavily on this statement of the Discipline Committee in recommending that the Solicitor be readmitted subject to the conditions laid out by Dr. Graham Glancy in his report, to which Convocation will later refer.

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The Solicitor submits that the psychiatric evidence supports readmission, and that the problems which created the situation leading to his earlier misconduct have now been resolved. The Society submits that the Solicitor has failed to discharge the heavy onus upon him to satisfy the criteria for readmission.

In support of his position, the Solicitor tendered three medical reports, one from Dr. Andrew Malcolm (a medical doctor) dated September 12, 1993, and two from Dr. Raymond Morris (a registered psychologist) dated August 16, 1993 and February 25, 1994, respectively. Dr. Malcolm, who had initially submitted a report on January 3, 1992 stating that the Solicitor suffered from a depressive illness that had caused him to be seriously dysfunctional over a period of at least five years, found that:

"[The Solicitor] had recovered and had returned to that condition of mental stability that ... characterized him for the many years during which he successfully practised law."

Dr. Malcolm also stated that:

"He had made a complete recovery and there was no indications of any persisting psychiatric symptoms."

In his August 16, 1993 report Dr. Morris, who had and continues to have an on-going therapeutic relationship with the Solicitor, wrote that:

"Mr. Gray could resume his practice of law, having appropriately resolved the personal issues which contributed to his previous difficulties leading to discipline by the Law Society."

In his follow up report, Dr. Morris again states:

"It would appear that Mr. Gray has all of the personal resources and support system necessary to function in his vocation of choice if he wishes. I would have no reservations recommending this gentleman's reinstatement as a lawyer."

In addition to the medical reports, the Solicitor also tendered three letters in support of his good character. Two of these letters were received from members of the profession (Donald Finn and Michael Di Paolo) in response to Notices in the Ontario Reports.

Although both letters spoke highly of the Solicitor, neither of the authors had a particularly indepth knowledge of the Solicitor from which to draw. Mr. Finn appears to have been a family friend of the Solicitor, but the Solicitor admits that he has not seen Mr. Finn for some six to eight years, and the letter is limited to a general praising of the Solicitor's conduct when dealing with Mr. Finn's office. Mr. Di Paolo also speaks highly of the Solicitor and states that at all times he "conducted himself in a gentlemanly and professional manner." Mr. Di Paolo's involvement with the Solicitor arises from an isolated case with the Solicitor several years ago, and speaks for the Solicitor's conduct in that proceeding. Although both letters generally discuss the Solicitor's commitment to the high standard of the profession, they are historical and limited especially in the writers' personal and professional exposure to the Solicitor. Additionally, neither shed any light on the manner in which the unfortunate accumulation of stresses has affected the Solicitor's character.

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A third character letter was submitted by Frances Craig, the Managing Director of the Ontario Private Camp Grounds Association (O.P.C.A.). Ms. Craig has been acquainted with the Solicitor for a period of some 15 years, and has had considerable experience in dealing with the Solicitor in his professional capacity since approximately 1977. Following his resignation from the Society, the Solicitor joined the O.P.C.A. as an associate member and therefore had occasion to work quite closely with Ms. Craig who states:

"By the spring of 1993, there was a notable improvement in his general disposition."

Her conclusions and recommendations are as follows:

"[The Solicitor] and I have been working together during the past month. In my opinion, there is no doubt that he is, at this time, a person fit and proper to engage in the practice of law. During my first term as Managing Director, [the Solicitor had an excellent personal and professional record. I believe, that he is now quite capable of again establishing such a record."

While these conclusions speak highly of the Solicitor, the brief period of time for which the writer worked with the Solicitor is a severe limitation. It is in working with a person over a long period of time that one would normally expect the reflections of character, as well as any indicia of psychiatric problems, to emerge most clearly.

It should also be noted that Ms. Craig's conclusions with regard to the Solicitor's fitness to engage in the practice of law can only be considered as evidence of the Solicitor's good character in the eyes of a member of the community, and cannot be employed by Convocation as any indication of the Solicitor's "recovery".

The Society did not dispute the good character of the Solicitor, other than to point out the meagreness of the evidence filed in support thereof. The Society did however file medical evidence in the form of a report by Dr. Graham D. Glancy, who also testified at the readmission hearing before the Admissions Committee. Dr. Glancy's conclusions, based on an interview with the Solicitor, an interview with the Solicitor's wife (conducted by Society Worker C. Regehr), various psychometric tests and a reading of the relevant medical and legal background, were as follows:

"It is my opinion that he suffered from chronic major depression over a number of years with an associated diagnosis of post-traumatic stress disorder. I should note that the current diagnostic classification does not allow us to specifically diagnose a chronic and complicated grief reaction but this clearly relates to the herein disorder. The above diagnoses also reflect his tendency to absorb himself in his work to an excess degree at times of stress resulting as what in many circles is referred to as "burnout"."

Dr. Glancy also made the following observations, regarding the Solicitor's efforts in attempting to deal with the underlying problems which caused or contributed to his misconduct.

"It would appear that the subjects symptoms of depression and post-traumatic stress disorder are substantially resolved."

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And further:

"The subject has developed insight into his tendency to withdraw emotionally using work as a defence mechanism causing occupational stresses. He has been able to identify, delineate and share his feelings. This may help him to deal with any future losses and stresses in a more adaptive manner. He also has a good therapeutic relationship with Dr. Morris."

The above evidence speaks highly of the Solicitor's ongoing commitment to resolve those personal problems which resulted in his earlier misconduct. As well, the character evidence which was filed depicts the solicitor as a conscientious practitioner.

Analysis

We are of the view that the application for readmission must fail. The evidence filed, while supportive of the solicitor as a candidate for readmission, falls short of the standards required in order to warrant readmission.

The guiding principle to be considered on such applications is the public interest in ensuring that members of the Society are guided by the highest ethical standards, and practice with the utmost good faith. This is the standard set by the Society, and it is the standard which the public has a right to expect from all members of the profession. The failure to achieve this standard has an effect on the profession as a whole, and serves to bring the administration of justice into disrepute.

With deference, it is our view that the Admissions Committee erred in the manner in which it interpreted and applied the report and decision of the Discipline Committee dated September 10, 1992. The fact that the Discipline Committee chose to permit a resignation rather than to seek disbarment as a result of the particular psychiatric circumstances relating to the Solicitor is of little relevance when considering an application for readmission. Although the recommendations of a Discipline Committee which has considered a case of disbarment may be of some assistance in an application for readmission, these recommendations should not be given undue weight. In this case, there was some sense by Convocation that the Discipline Committee had overstepped its jurisdiction in making a recommendation regarding the readmission of the Solicitor. A Panel deciding on the readmission of a solicitor must not be guided by the recommendations of the Discipline Committee which considered the misconduct and the sanctions for it. Rather, the Admissions Committee considering an application for readmission must make its own decision based on the over-arching need to ensure that the public interest is protected.

The criteria for determining whether the public interest would be served by a solicitor's readmission is whether the solicitor has been rehabilitated and possesses the good character required for admission or readmission to the Society.

The facts which gave rise to the Solicitor's misconduct as found, while a weighty consideration in deciding the appropriate penalty for the misconduct, bear less prominence in determining admission or readmission. The essence of the matter for readmission is, given that rehabilitation is established, whether the Solicitor is of a character which enables his readmission.

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Convocation accepts the definition of good character put forward in Re Spicer:

"Character is that combination of qualities or features distinguishing one person from another. Good character connotes moral or ethical strength, distinguishable as an amalgam of virtuous attributes or traits which would include, among others, integrity, candour, empathy and honesty."

Convocation further accepts the test for determining the good character required for admission as stated in Re Spicer:

"[The Solicitor] bears the onus of establishing on the balance of probabilities that he or she is of good character and should be admitted to the Society. Thus, on the balance of probabilities, [the Solicitor] bears the burden of persuasion to establish by clear and convincing evidence that he is of good character."

Therefore, a solicitor seeking readmission must discharge a heavy onus. It is an onus which, practically speaking, exceeds the onus on a candidate for admission since a solicitor who seeks readmission has previously misconducted himself or herself as a member of the profession. It is not sufficient that there be some evidence of good character, or that the medical evidence indicates a substantial resolution of the underlying problems at a particular point in time. Rather the Admissions Committee must be presented with evidence with which it can satisfy itself that in all events the public interest will be protected. In Re Goldman Convocation established the evidentiary standard required in readmission matters:

"Convocation accepts that substantial and satisfactory evidence is needed to show that there is no probability of the Applicant offending in the future. The Society must consider whether a sufficient period has elapsed before the Applicant applies for restoration. The Applicant must establish that his conduct and character are unimpeached and are unimpeacheable and this could only be established by the evidence of trustworthy persons especially members of the profession and persons with whom the Applicant has associated with since his disbarment."

In the case of Re Moynihan the Supreme Court of Washington considered the quality and standard of evidence required for readmission and held that:

"A petitioner for reinstatement to the Bar must show by clear and convincing evidence that he is rehabilitated, fit to practice, competent and has complied with all applicable discipline orders and rules."

The above references to "substantial and satisfactory evidence" and "clear and convincing evidence" mean that the evidentiary burden on the Solicitor seeking readmission is onerous. This high burden is based on the depth of the responsibility, trust and confidence reposed in members of the profession by the public, clients and colleagues. The public has a right to expect that a solicitor who has misconducted himself or herself to the detriment, whether real or potential, of the public, will not be readmitted unless and until he or she can show through clear and compelling evidence that there is no real possibility of future misconduct. We are of the view that the Solicitor has failed to show through clear and compelling evidence that he is rehabilitated, and he has not demonstrated the good character required by the Society.

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The psychiatric condition which resulted in the Solicitor's earlier misconduct was triggered by professional and personal stresses. According to the medical evidence, this is not a condition which resolves itself in a "cure", but rather a condition which, through appropriate therapeutic intervention, may be controlled through behavioural and lifestyle modifications with the passage of time. The medical evidence which speaks highly of the Solicitor's "recovery" illustrates and underlies the importance of ongoing therapy, and the passage of time, to the appropriate resolution of his condition.

The medical evidence filed presents clear and compelling evidence of the Solicitor's desire to achieve a resolution and demonstrates that he has achieved the capacity to cope with past losses in order that they may not cause a recurrence of his condition. However, the medical evidence does not provide clear and compelling evidence that future stresses and/or losses may not result in a recurrence of his condition such that the public may once again be put at risk.

Convocation accepts the inherent uncertainties of medical science, especially in dealing with the course of human affairs. It is improbable that one can ever be "cured" of, or "recover" from a psychiatric condition such that the medical experts can guarantee that there exists no possibility of future recurrence. It is our view that the monitoring of such a condition over a substantial period of time is the best indicator of rehabilitation, and represents the most concrete assurance that the public interest will be protected.

In the present case, the Solicitor resigned on October 22, 1992, and came before the Admissions Committee on an application for readmission in March, 1994. We are of the view that this period of time is insufficient to allow adequate psychiatric monitoring in order to ensure that the underlying problems are under control to the extent required to ensure that the public is not exposed to further risks.

We are also of the view that this period of time is insufficient to demonstrate the emergence of the Solicitor's character to the extent necessary to demonstrate to Convocation that in the resolution of his psychiatric problems, the character which has emerged is of the quality required by the Society for readmission. The character references filed in support of this application demonstrate this limitation. The writers have not been exposed to him during the critical period or in a continuing way, and their opinions are therefore of little use in determining the completeness of his rehabilitation and the establishment of his good character.

In *Re Moynihan*, the Supreme Court of Washington refers to the Rules for Lawyer Discipline which require an Attorney to wait five years after disbarment before bringing a petition for reinstatement. In Ontario, the Law Society Act contains no requirement that the Solicitor allow a minimum period of time to pass prior to applying for readmission. However, a pattern has emerged in practice, and we are of the view that a general guideline should be enunciated in order that members, the bench and the public understand the importance of the decision which faces the Admissions Committee on readmission matters. In *Re Goldman*, six years elapsed between the Solicitor's disbarment and his subsequent application for readmission. While *Re Goldman* concerned a situation of disbarment whereas the Solicitor in the instant case was granted permission to resign, we are of the view that similar considerations obtain.

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Convocation accepts that as a general rule, an application for readmission should not be entertained for a period of at least three years subsequent to disbarment or resignation. We are of the view that Convocation is justified in expecting that at least a three year period is required for the Solicitor to gather and present clear and compelling evidence to satisfy the onerous standards required for readmission. This is especially so when dealing with psychiatric conditions such as that present in this case, where the additional period of time can only add further assurance to the claim of rehabilitation.

Conclusion

In conclusion, we are not satisfied that the Solicitor has shown, through a long course of conduct, the good character and evidence of rehabilitation required to ensure that he is now a person to be trusted, and in every way is fit to be a member of the Society. However, we are of the view that although the Solicitor's application must fail at this time, should future psychiatric monitoring continue to produce results consistent with those which were before us, and should the Solicitor gather clear and compelling evidence of good character, the Solicitor would be an excellent candidate for readmission.

"R. Manes"

January 25, 1995

Filed

ORDERS

The following Orders were filed.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Jeffrey Martin Neiman,
of the City of Toronto, a Barrister and
Solicitor (hereinafter referred to as "the
Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the majority of the Discipline Committee dated the 23rd day of September, 1994 and the Dissent dated the 23rd day of September, 1994, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

27th January, 1995

CONVOCATION HEREBY ORDERS that Jeffrey Martin Neiman be suspended for a period of twenty days, such suspension to commence the 10th day of December, 1994 and that he pay costs in the amount of \$200.00.

DATED this 24th day of November, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Thomas Holyoake Box,
of the Town of Aurora, a Barrister and
Solicitor (hereinafter referred to as "the
Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Reports and Decisions of the Discipline Committees dated the 13th day of April, 1993 and the 17th day of October, 1994 in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Thomas Holyoake Box be granted permission to resign.

DATED this 24th day of November, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

