MINUTES OF CONVOCATION

Friday, 28th November, 1997
8:30 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Bobesich, Carpenter-Gunn, Carter, R. Cass, Chahbar, Cole, Cronk, Crowe, Curtis, DelZotto, Epstein, Farquharson, Feinstein, Finkelstein, Gottlieb, Harvey, Jarvis, Krishna, Lamek, Lamont, Lawrence, Legge, MacKenzie, Manes, Marrocco, Millar, Murphy, Murray, O'Brien, Ortved, Puccini, Ross, Ruby, Sachs, Sealy, Stomp, Swaye, Topp, Wardlaw, Wilson and Wright.

.....

The reporter was sworn.

.....

IN PUBLIC

.....

TREASURER'S REMARKS

The Treasurer noted the great loss to the profession and the public with the death of Mr. Justice John Sopinka who passed away on November 24th, 1997. Convocation rose for a moment of silence in his memory.

The Treasurer announced that a special Remembrance Day program is being planned by Marshall Crowe and the Secretary, Richard Tinsley for November 11th, 1998.

A Special Convocation has been scheduled for Friday, December 12th to discuss priorities and a Special Convocation is scheduled for Saturday, December 13th, to appoint The Right Honourable Brian Dickson as an honorary Bencher of the Law Society.

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IN CAMERA

.....

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

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APPOINTMENT

It was moved by Mr. Feinstein, seconded by Mr. O'Brien THAT Robert P. Armstrong, Q.C. be appointed to the board of the Ontario Bar Assistance Program as the Law Society's representative for a period of 2 years, effective immediately.

Carried

MOTION - REPORTS TAKEN AS READ

It was moved by Mr. Feinstein, seconded by Mr. O'Brien THAT the Draft Convocation Minutes for October 21st, 27th, 28th and November 13th, 1997, the Reports of the Executive Director of Education, Clinic Funding Committee and Admissions and Equity Committee be adopted.

Carried

Draft Minutes of Convocation - October 21st, 27th and 28th and November 13th, 1997

(see Draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

Report of the Executive Director of Education

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Executive Director of Education asks leave to report:

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, November 28th, 1997:

Joanna Georgia Gordan	38th BAC
Manoj Gupta	38th BAC
Seamus John Anthony Lee	37th BAC
Anthony Stuart Lowenstein	38th BAC
Michael Anthony Sartor	38th BAC
Holly Jean Sutton	36th BAC
Patience Boatemaa Whyte	38th BAC

B.2. READMISSION FOLLOWING RESIGNATION AT OWN REQUEST

B.2.1. The following former member applies for readmission and has met all the requirements in that regard:

Chella Ann Turnbull	Called:	March 31st, 1989
	Resigned:	November 24th, 1995

B.3. MEMBERSHIP UNDER RULE 50

B.3.1. Retired Members

B.3.2. The following members are at least sixty-five years of age and fully retired from the practise of law, and request permission, under Rule 50 made under the Law Society Act, to continue their memberships in the Society without payment of annual fees.

Arthur Leslie Davies	Sharon
Robert Irwin Martin	Toronto
Frank Andrew Maurice Tremayne	Toronto

B.4. RESIGNATION - SECTION 12 OF REGULATION 708 MADE UNDER THE LAW SOCIETY ACT

B.4.1. The following members apply for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. In all cases the annual filings are up to date. In cases where the member was engaged in the practice of Ontario law for any amount of time, the member has declared that all trust funds and clients' property for which they were responsible have been accounted for and paid over to the appropriate persons. They have further declared that all clients' matters have been completed and disposed of, or arrangements made to the clients' satisfaction to have their papers returned to them, or have been turned over to another lawyer. The Complaints, Audit and Staff Trustees departments all report that there are no outstanding matters with these members that should prevent them from resigning. These members have requested that they be relieved of publication in the Ontario Reports:

1. Gordon Henry Andreiuk of Edmonton, Alberta was called to the Bar on February 19, 1997 and has not engaged in the practice of law in the Province of Ontario.

2. Kris Shailer Almeric Cecella Astaphan of Oakville, was called to the Bar on April 10, 1986 and practised law for the past 11 years.

3. Laura Evelyn Dobrowolski of Toronto, was called to the Bar on February 7, 1996 and was engaged in the practice of law from August 19, 1996 to May 8, 1997.

4. Diane Marie Mazur of Winnipeg, Manitoba was called to the Bar on February 8, 1994 and was engaged in the practice of law from March 21, 1994 to April 15, 1996.

5. Ronald Gordon McMillan of North Bay, was called to the Bar on April 10, 1964 and practised law from April 10, 1964 to December 31, 1996.

6. Douglas Joseph Sleeman of Halifax, Nova Scotia was called to the Bar on April 19, 1963 and has practised law since that time, except for the period of May, 1970 to September, 1973 when he attended university.

C. INFORMATION

C.1. ROLLS AND RECORDS

C.1.1. Deaths

Robert Douglas Osborne Newmarket	Called: June 29, 1950 Died: May 16, 1996
Michael Morris Walters Kitchener	Called: June 19, 1952 Died: October 13, 1997

C.2. CHANGES OF NAME

C.2.1.

From	To
Patricia See-Wing Lo	Patricia See-Wing Ross (Change of Name Certificate)
Antonietta Marciano	Antonietta Luccisano (Marriage Certificate)
Susan Elizabeth McKay	Susan Elizabeth Fraser (Marriage Certificate)
Carla Rebecca Brady	Carla Rebecca Swansburg (Birth Certificate)

ALL OF WHICH is respectfully submitted

DATED this the 28th day of November, 1997

THE REPORT WAS ADOPTED

Report of the Clinic Funding Committee

Clinic Funding Committee
November 18, 1997

Report to Convocation

Nature of Report: Information

THE CLINIC FUNDING COMMITTEE met on November 13, 1997. In attendance were:

Committee members: W.A. Derry Millar, Chair, Tamara Stomp, Vice-Chair, Pamela Mountenay-Cain, Mark Leach, Gordon Wolfe Harriet Sachs, Bencher

Joana Kuras, Clinic Funding Manager

This report contains:

- Information Only

1. Special Legal Education/Outreach

The clinic funding Regulation authorizes the payment of funds to a clinic to provide activities reasonably designed to encourage access to legal or paralegal services or to further such services, and services designed solely to promote the legal welfare of the community. Under this broad definition, a wide range of community outreach and public legal education projects are undertaken by clinics.

The Minister of Justice of Canada has provided funding for public legal education and information services across Canada since 1989. The Clinic Funding Committee is the recipient of these funds for Ontario in recognition of the public legal education role carried out by clinics.

The Clinic Funding Committee provides the Minister of Justice with an audited financial statement, as well as reports on public legal education and outreach services provided using those funds. The Clinic Funding Committee has established a funding policy for special outreach projects. Clinic funding staff make the initial funding decisions which are reviewed and approved by the Clinic Funding Committee.

Proposals must demonstrate that the multicultural character of Ontario's population has been considered and, that information will be delivered to the target community at a language/literacy level appropriate for that community.

These special outreach project decisions are provided for your information only.

ADVOCACY RESOURCE CENTRE FOR THE HANDICAPPED - $11,000

Ethno-Racial Aboriginal Outreach Project *Pamphlets*

To provide public education and training about disability law and entitlements, and to develop accessible legal education materials, consisting of two 8-page pamphlets in five different languages.

ALGOMA COMMUNITY LEGAL CLINIC - $4,673

"Exploring the Myths" *Speakers' kit*

To develop and produce a speakers' kit for a 6-part video series on the issue of childhood sexual abuse, its effects, and how a community can develop solutions and prevention tactics. The speakers' kit will allow the video to be used as an educational tool across Ontario.

AFRICAN CANADIAN LEGAL CLINIC - $11,438

Legal Trends: Responding to the changes *4 workshops and manual*

Four one-day workshop in the cities of Toronto, Windsor, Hamilton, and Ottawa, for frontline staff of social service agencies serving the African Canadian Community. The workshop manual, printed in Somali, Swahili, and Ghanian, will include information on the criminal justice system, with particular focus on youth issues.

EAST TORONTO COMMUNITY LEGAL SERVICES - $5,265

Equal Justice *Clinic Newsletter*

1,800 copies of a newsletter to the general public, clients, members and agencies, targeted within the Chinese, Vietnamese, and Tamil communities.

INDUSTRIAL ACCIDENT VICTIMS GROUP OF ONTARIO - $25,412

Workers' Compensation Education Video *Video*

Production of a 30-minute video, including a series of profiles of injured workers and interviews with experts. The video demonstrates the erosion of WCB from the worker's/ recipient's point of view.

JUSTICE FOR CHILDREN AND YOUTH - $3,340

"Rights Cards" *Wallet information cards*

Creation and distribution of wallet-sized cards, which provide information about legal rights, especially in the criminal law context. The cards will be distributed to youth, with special attention to young people in shelters, and homeless and street youth. They will be translated into other languages.

KEEWAYTINOK NATIVE LEGAL SERVICES - $2,352

Non-profit corporations workshops *Workshops*

Workshop on creating and operating non-profit corporations, in two James Bay coastal communities - Attawapiskat and Kashechewan.

LEGAL ASSISTANCE OF WINDSOR - $960

Family Law Resource Package *Fact sheets*

An information package for service providers, low-income people and the general public, in response to commonly-asked questions about separation, custody and access, child and spousal support, effect of immigration status on family law problems, and violence. The package will be similar to the HIV/AIDS resource package "Moving Through the Maze" recently completed by this clinic.

METRO TORONTO CHINESE & SOUTHEAST ASIAN LEGAL CLINIC - $6,657

Public Education on Employment Insurance and Immigration Law — *Workshop and Factsheets*

To conduct two workshops, and to develop 4,000 sheets in Chinese, Vietnamese and English on legal issues affecting sponsored immigrants, e.g. access to social assistance, sponsorship requirements.

MUSKOKA LEGAL CLINIC - $7,671

Workfare Monitoring Project — *Community information project*

A community outreach project to gather information from clinics and anti-poverty organizations monitoring job displacement, sanctioning and employment issues for participants, including 13 information sessions and a fact sheet for clinic clients.

NEIGHBOURHOOD LEGAL SERVICES - $4,806

Multilingual NLS newsletter — *Newsletter*

To produce and distribute 2,000 copies of the NLS newsletter in Chinese, Tamil and Spanish. The newsletter focuses on commonly asked legal questions with respect to landlord and tenant, social assistance, immigration and employment law.

PARKDALE COMMUNITY LEGAL SERVICES - $5,672

Translation of Workers' Rights Self-Help Kit — *Self-Help kit*

The Employment Standards Work Group produced a Workers' Real Self-Help Kit in January 1997, which is being used extensively by individuals, legal clinics, community groups and agencies, and community-based employment training centres across Ontario. The ESWG will translate the kit into four languages: Portuguese, Chinese script, Tamil and Vietnamese.

SCARBOROUGH COMMUNITY LEGAL SERVICES - $6,700

Translation of 4 CLEO pamphlets to Tamil — *Pamphlets*

The pamphlets to be translated are, "Employment Insurance", "Quitting Your Job", "Sponsored Immigrants", and "What Happens if I Can't Pay the Rent?". 2000 of each pamphlet will be printed and distributed at public education events.

SOUTH OTTAWA COMMUNITY LEGAL SERVICES - $3,865

Self-Help Seminiars: Uncontested Divorce and Power of Attorney Seminars

A series of three 2-part seminars on uncontested divorce. A series of three Power of Attorney seminars for seniors: two in English, one in French. Supported by participation of the private bar and interpreters in Somali, Arabic and Farsi. Participants will be pre-screened for eligibility by clinic staff and social services workers.

Derry Millar
Chair
Clinic Funding Committee

November 18, 1997

THE REPORT WAS ADOPTED

Report of the Admissions and Equity Committee

Admissions & Equity Committee
November 28, 1997

Report to Convocation

Purpose of Report: Information
Decision-Making

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions & Equity Committee ("the Committee") met on November 13, 1997. Committee members in attendance were William Carter (Vice-Chair), Nora Angeles, Tom Carey, Allan Lawrence, Robert Martin, Dean Marilyn Pilkington, Dean Sanda Rodgers, and Harriet Sachs. Staff in attendance were, Mimi Hart, Liz McCreight, Kimberley Saikkonen, Sophia Sperdakos, and Alan Treleaven.

2. The Committee is reporting on the following matters:

- Procedures Governing the Recruitment of Summer Students in the City of Toronto
- Change of Algorithm Used in the Matching Program
- Bar Admission Course Review
- Model Policies on Equity in the Workplace and Flexible Workplace Arrangements

PROCEDURES GOVERNING THE RECRUITMENT OF SUMMER STUDENTS IN THE CITY OF TORONTO

1. The Summer Student Recruitment Procedures govern the recruitment of summer students within the City of Toronto.

2. Based on general satisfaction on the part of firms and students with the summer student recruitment process, adoption of the same procedures in place in prior years is proposed, subject to the changes in dates and adjustment for changes from "Metropolitan Toronto" to "City of Toronto" to reflect the new structure of the City of Toronto effective January 1998.

3. The Committee has considered the draft proposals and recommends approval of the Recruitment Procedures for Summer Students set out at Tab 1. The Committee further recommends to Convocation that these recruitment procedures be approved without the necessity of their being returned yearly for approval, unless a change to the content is being recommended.

CHANGE OF ALGORITHM USED IN THE ARTICLING STUDENT MATCHING PROGRAM

1. The algorithm currently used by National Matching Services Inc (independent contractor to the Law Society) to match students and firms in the Articling Student Matching Program is modelled after an algorithm that has been used for over 45 years in the placement of students into residency programs. The suggestion has arisen in other matching programs that a different result might be achieved if a "student-proposing" (starting with the student's list) algorithm as opposed to a "firm proposing" (starting with the firm's list) algorithm were used.

2. In reality, a change in algorithm is unlikely to have an effect on our match results except in very rare circumstances, e.g., one in one thousand pairings. Should these rare circumstances arise, no student who would otherwise be matched would be unmatched. Nonetheless, it is felt that a "student proposing" algorithm is the more natural model. The 1997 match and two prior matches were run with the "student proposing" algorithm, with no difference in result from the result achieved using the "firm proposing" algorithm.

3. Mr. Elliott Peranson, President, National Matching Services Inc. attended the Committee meeting to answer technical questions the Committee had about the Matching Program. The Committee is of the view that it is appropriate to approve the change and that for practical purposes it will not have any significant affect on the outcome of the match.

4. The Committee recommends the move to a "student proposing" algorithm for the Articling Student Matching Program for 1998 and subsequent years.

BAR ADMISSION COURSE REVIEW - STATUS REPORT

1. In January 1997 Convocation approved the Admissions & Equity Committee's priority lists. Among the matters identified by the Admissions & Equity Committee as the highest priority was Bar Admission Course ("BAC") review. That process involved, as a first step, the development of a working definition of competence to underlie the review process. The Competence Task Force has been working on such a definition, which will be before Convocation in November.

2. The scope of the examination the Committee is to undertake was approved by Convocation in January 1997 as follows:

> *In furtherance of its role to ensure that lawyers meet high standards of learning, competence, and professional conduct the Committee proposes to undertake an examination of what the admission requirements to the Ontario Bar should be, including*
>
> *a) an appropriate definition for entry level competence;*
> *b) the Law Society's role in admissions including:*
>
> *(i) continuing to deliver a Bar Admission Course;*
> *(ii) setting standards for admissions and delegating delivery of the program; or*
> *(iii) setting standards for admissions and administering examinations for admissions;*
>
> *c) the kind of Course the Society might continue to deliver (this assumes that (a) has been answered);*
> *d) the criteria to assess the success of any revised Course;*
> *e) articling requirements and options and possible alternatives to traditional requirements; and*
> *f) issues related to the interaction between law school requirements and the Law Society's requirements.*

3. In view of the equity related issues with which the Committee has also been involved, equity and diversity considerations in the licensing process will be part of the overall analysis the Committee undertakes.

4. The following initial steps have been taken in the BAC review process:

a) Discussions have been held with educational consultants from the Ontario Institute for Studies in Education (OISE) to develop a proposal for a recommended approach to the review process.
b) Consultations have begun with a number of boards of United States bar examiners.
c) Focus groups are being arranged with recent BAC graduates on the effectiveness of the BAC in preparing them for the practice of law.
d) A meeting is being arranged with the Ontario Law Deans.
e) Information and recommendations that will emerge from the Task Forces looking into the examination performance of aboriginal and visible minority students as well as students in the French language component of the BAC will be integrated into the overall review process for the BAC.

5. The Committee's process for the review is set out at Tab 2.

MODEL POLICIES

1. In May 1997 Convocation unanimously approved the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*. Among the recommendations it approved Convocation asserted that the Law Society should develop and maintain the tools to function as a resource to the profession on the issue of diversity and equity. Among the resource tools outlined were model policies, including those related to flexible work arrangements and equity in the workplace.

2. In the Admission & Equity Committee's priority list provided to, and approved by, Convocation on September 26, 1997, the Committee identified as a high priority the dissemination of two model policies on equity in the workplace and flexible work arrangements. The Treasurer's Equity Advisory Group has completed minor revisions to the draft policies, which have been before the Committee.

3. The model policies, set out at Tabs 3 and 4 will be distributed to the profession in the new year in furtherance of the Law Society's commitment to act as a resource to the profession on equity and diversity.

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

(1) Draft of the Procedures Governing the Recruitment of Summer Students for the Summer of 1998. (Tab 1)

(2) Proposed Bar Admission Course Review Process. (Tab 2)

(3) Guide to Developing a Policy regarding Workplace Equity in Law Firms. (Tab 3)

(4) Guide to Developing a Policy regarding Flexible Work Arrangements. (Tab 4)

THE REPORT WAS ADOPTED

CALL TO THE BAR

The following candidates listed in the Report of the Executive Director of Education were called to the Bar by the Treasurer and taken by Mr. Lamont before Mr. Justice Gerald F. Day to sign the Rolls and take the necessary oaths.

Joanna Georgia Gordon	38th Bar Admission Course
Manoj Gupta	38th Bar Admission Course
Seamus John Anthony Lee	37th Bar Admission Course
Anthony Stuart Lowenstein	38th Bar Admission Course
Holly Jean Sutton	36th Bar Admission Course
Patience Boatemaa Whyte	38th Bar Admission Course

Final Report of the Competence Task Force

Mr. Epstein presented the final Report of the Competence Task Force.

Report to Convocation
November 28, 1997

Competence Task Force - Final Report

Purpose of Report: Decision-Making

TABLE OF CONTENTS

NATURE OF THE REPORT/BACKGROUND

1. In February 1997 Convocation approved Terms of Reference for the Competence Task Force ("the Task Force"). Those terms are as follows:

> *The Task Force will consist of two phases. In Phase I the Task Force will develop a working definition of competence and, having done so, will provide options to Convocation on the role the Law Society should have in developing, maintaining, improving, and enforcing that competence.*
>
> *Phase II will use the Phase I conclusions to analyse the Society's existing approaches to competence; assess whether these fit within the Phase I conclusions; and further define how the Law Society will carry out its role so as to:*
>
> - *assist members of the profession to know the standards of competence they must meet;*
> - *assess its current approaches to competence based on whether the Law Society should develop, maintain, improve, or enforce competence (eg. Bar Admission Course);*
> - *provide a framework for initiatives whose goals include competence-related objectives;*
> - *provide guidance to staff whose role is to implement programs, many of which are competence-related; and*
> - *assist benchers and staff to consistently apply those regulatory components that relate to the competence of members.*

2. The Task Force members are Philip Epstein (co-chair), Derry Millar (co-chair), Nora Angeles, Tom Carey, Elvio DelZotto, William Friedman, Marilyn Pilkington, Margaret Ross, and Caron Wishart. Staff members to the Task Force are Susan Binnie, Sophia Sperdakos and Alan Treleaven.

3. On June 27, 1997 the Task Force provided Convocation with its interim report. It set out a proposal for the work it would do over the coming months and indicated that it would report to Convocation in the fall of 1997. Benchers were asked to provide comments to the Task Force. One comment was received.

4. The purpose of this report is to provide Convocation with:

   a) the draft working definition that the Task Force has developed;
   b) a recommended approach for the manner in which the definition may be advanced; and
   c) a discussion of the Phase II terms of reference.

5. Convocation is requested to

   a) determine whether to endorse and approve the Task Force's definition and recommendations; and
   b) provide any direction it feels appropriate.

WORKING DEFINITION OF THE COMPETENT LAWYER

CONTEXT

6. In its interim report to Convocation dated June 27, 1997 the Task Force set out the approach to the definition of the competent lawyer that it intended to follow. It is worth repeating some of the factors the Task Force identified at that time because they place the draft definition, set out below, in context.

7. In its June report the Task Force noted:

   The Task Force considers it appropriate to take an holistic approach to the definition of competence. As a regulatory body the Law Society should be interested in the functions that lawyers perform, the general attributes they must possess, and the manner in which they interweave these functions and attributes to serve clients effectively.

8. The June report went on to say:

   The definition will be drafted to reflect the following:

   a) Since competent lawyers must not simply possess certain abilities, skills, and attributes, but must demonstrate them in all professional activities, the definition and rule must be framed in active language. It is not what lawyers can do that is important, but what they do do. It is the manner in which the skills, abilities, and attributes lawyers are expected to have are interwoven to serve client needs that forms the key to the definition of competence.

   b) Since the purpose of the definition or rule is not to rigidly circumscribe competent behaviour, but to frame its parameters, the language will be inclusive rather than exclusive, and broadly rather than narrowly framed. For example, there will be no attempt to describe competent practice in specific practice areas, but rather the critical functions and attributes that all lawyers must have. It is critical that the definition or rule reflect the reality that defining competence is not akin to solving a mathematical calculation and that standards of competence will never be static.

c) *The definition should go beyond generic reference to skills, knowledge, and attributes, expanding on what is included under these components and describing the appropriate interweave among them.*

d) *More specifically, the Task Force will attempt to construct a definition of competence to take account of the following:*

(i) legal knowledge;
(ii) problem solving;
(iii) oral and written communication, including advocacy;
(iv) legal research, drafting, and writing;
(v) fact gathering, and factual and legal analysis;
(vi) intellectual ability, judgment, practical wisdom;
(vii) professional responsibility and ethics; and
viii) practice management and administration.

9. The working definition the Task Force has developed reflects the following additional factors and approaches:

a) The focus of the definition is not on competence as an abstract concept, but rather as a description of the skills, attributes, and values that a competent lawyer has and applies in each matter undertaken on behalf of a client.

b) The definition is not intended to address the issue of standards of competence. The Task Force is of the view that

(i) as the Law Society addresses individual competence related programs and concerns, the appropriate standards to be applied become part of the analysis (eg. Specialist Certification; Bar Admission Reform); and

(ii) the ultimate assessment of whether, in a specific instance, a lawyer demonstrates competent behaviour within the meaning of the definition should be determined on the basis of evidence as to the appropriate standards to be applied in all the circumstances of the matter being examined.

c) The Task Force is of the view that the enumerated skills, attributes, and values set out in the definition are all *equally* essential components of the definition of a competent lawyer. There may be additional components, but those included in the definition provide an essential framework for lawyer competence.

d) The definition is designed to be compatible with some of the work already done by the Law Society to define components of competence, including the role statement, Rule 2 of the Rules of Professional Conduct, and the proposed section 40 amendment to the *Law Society Act*.[1]

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[1]For more discussion of this see the Competence Task Force Interim Report, June 27, 1997, page 4. The Task Force's research included exploring the Complaints department and LPIC statistics and information to assess their impact on the nature of the definition. It also sought to ensure that its approach did not conflict with the approach of the Professional Development and Competence Committee (PD&C) or Project 200. Membership on the Task Force included LPIC staff as well as benchers from the PD & C and Admissions & Equity Committees.

THE DEFINITION

10. The Task Force's proposed working definition is as follows:

A competent lawyer has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client. These include:

i.	knowing general legal principles and procedures, and the substantive law and procedure for the areas of law in which the lawyer practices;
ii.	investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client as to appropriate course(s) of action;
iii.	implementing the chosen course of action through the application of appropriate skills including: (a) legal research, (b) analysis, (c) application of the law to the relevant facts, (d) writing, and drafting, (e) negotiation, (f) alternative dispute resolution, (g) advocacy, and (h) problem solving ability as each matter requires;
iv.	communicating in a timely and effective manner at all stages of the matter;
v.	performing all functions conscientiously, diligently, and in a timely and cost effective manner;
vi.	applying intellectual capacity, judgment, and deliberation to all functions;
vii.	complying in letter and in spirit with the Rules of Professional Conduct;
viii.	recognizing limitations in one's ability to handle a matter, or some aspect of it, and taking steps accordingly to ensure the client is appropriately served;
ix.	managing one's practice effectively;
x.	pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and
xi.	adapting to changing professional requirements, standards, techniques, and practices.

11. The Task Force seeks Convocation's approval of the definition.

RECOMMENDED APPROACH TO ADVANCING THE DEFINITION

12. In its interim report in June 1997 the Task Force indicated that in its view the definition of competence should be capable of informing all competence related work the Law Society undertakes. The definition should provide the starting point from which more specific work within the Law Society would flow, depending upon the particular focus of a department, activity, or procedure. The Task Force also indicated:

If this view of the role of the definition is to be workable, the development of an institutional and profession wide awareness and adherence to the definition is essential. For this to occur the definition must be relevant to the experience of the profession, reasonable, and flexible.

13. The Task Force continues to be of this view and has developed a definition that it believes allows for this approach.

14. The Task Force also indicated in its interim report that the definition should be developed as a Rule of Professional Conduct to replace the current Rule 2. Although the Task Force has not altered its view that this may ultimately be the approach to the definition the Law Society takes, after further discussion it is of the view that it would be premature to approach the definition in this way at this time.

15. Rather, the Task Force is of the view that the following approach should be taken:

a) the definition should be advanced by revising the Foreword to the Professional Conduct Handbook to include the definition at the end of the current Foreword, which reads:

> *The lawyer should observe the Rules of Professional Conduct hereinafter set out in the spirit as well as in the letter.*
>
> *Public confidence in the administration of justice and in the legal profession may be eroded by irresponsible conduct on the part of the individual lawyer. Accordingly, the lawyer's conduct should reflect credit on the legal profession, inspire the confidence, respect and trust of clients and the community, and avoid even the appearance of impropriety.*

b) Notices to the Profession should be provided to members, informing them of the definition, why the Law Society has adopted it, its function to guide members, and the role it will play in Law Society work.

c) The definition should be provided to all standing committees and to the various departments of the Law Society so that it will underlie the competence related work in which the Law Society engages.

d) The definition should be provided to the law schools, LPIC, law associations, and to continuing legal education providers for their assistance and use.

e) Over the next few years feedback on the use to which the definition is being put should be sought.

f) In the event the Law Society ultimately decides that it wishes to include the definition in a revised Rule 2, the comments of the profession and others would be sought.

16. In the Task Force's view the advantages of this approach are that:

a) it is gradual;
b) although at the outset it has an educational emphasis, it is more than just informational because it has a place in the Professional Conduct Handbook;
c) it allows for ongoing commentary on the usefulness of the definition, over a number of years; and
d) it allows the Law Society to adapt the use to which the definition is put in the future (eg. revised Rule 2) should it decide to do so.

17. The role the Law Society should have in developing, maintaining, improving, and enforcing the competence of members as reflected by the definition will be developed as the definition is incorporated into the work of various departments.

18. Having considered that the definition could be advanced as

a) information only;
b) a new Rule 2 of the Rules of Professional Conduct; or
c) part of the Foreword to the Professional Conduct Handbook

the Task Force considers option (c) to be the most appropriate for the reasons set out above.

19. The Task Force seeks Convocation's approval of the approach to advancing the definition set out in paragraph 15.

PHASE II

20. Convocation's initial view of the work to be done by the Competence Task Force was that having provided a working definition of competence the Task Force would use the definition to define further the Law Society's role in competence in various specific areas.[2]

21. Having considered this aspect of its terms of reference the Task Force is of the view that the Law Society may have differing roles in competence depending upon the nature of the activity under discussion. This assessment of its roles will by necessity be an ongoing process that will overlap with, and be affected by, the Law Society's assessment of its priorities at given points in time.

22. Rather than have a single Task Force attempt to define how the Law Society should carry out its role across the entire range of competence related issues, a better approach would be to endeavour to make the definition integral to the work that the various committees, working groups, and departments undertake.[3]

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[2] See paragraph 1 above.

[3] This would include competence related work generally as well as specific projects currently underway (eg. review of specialist certification program, implementation of requalification program, bar admission course review).

23. The Task Force recommends that rather than it continuing to work on these issues, an approach along the following lines be used to integrate the definition and a framework of analysis into Law Society work:

a) Convocation should make clear that the definition will inform the competence related work the Law Society undertakes. This would affect not only the work of departments, but of Task Forces, working groups, and consultants retained to consider competence related matters.

b) To further this objective staff in charge of such work should have the opportunity and be encouraged to consider and assess practical implications of the definition and ensure cross-communication among departments on how best to apply it.

c) In the development, administration, and analysis of competence related initiatives, activities, and work the Law Society should be sure that it is in a position *in each instance* to:

(i) assist members of the profession to know the standards of competence they must meet;
(ii) assess whether in particular activities the Law Society's most appropriate role(s) is to develop, maintain, improve, or enforce competence;
(iii) provide guidance to staff whose role is to implement programs; and
(iv) assist benchers and staff to consistently apply those regulatory components that relate to the competence of members.

d) As part of its monitoring function Convocation should receive

(i) annual reports on the Law Society's efforts to ensure a coherent approach to competence related work; and
(ii) ongoing evaluation and assessment of the appropriateness of the definition.

24. Using such an approach, Phase II of the Task Force, as a separate endeavour, would be unnecessary.

25. The Task Force seeks approval of the approach set out in paragraphs 23-24.

CONVOCATION'S CONSIDERATION

26. In summary the Task Force seeks Convocation's approval of:

a) the definition of the competent lawyer set out in paragraph 10;

b) the approach to advancing the definition set out in paragraph 15; and

c) the approach to competence related work set out in paragraph 23-24.

It was moved by Mr. Epstein, seconded by Mr. Millar that the Report be adopted.

Carried

THE REPORT WAS ADOPTED

Report of the Professional Development and Competence Committee

Meeting of November 13th, 1997

Professional Development and Competence Committee
November 13, 1997

Report to Convocation

Nature of Report: Policy and Information

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Professional Development and Competence Committee ("the Committee") met on 13 November, 1997. In attendance were Mary Eberts (Chair), Michael Adams, Kim Carpenter-Gunn, Ronald Cass, Susan Elliott and Helene Puccini. Committee members present for part of the meeting were Robert Aaron, Larry Banack (Vice-Chair), Ronald Manes, David Scott and Rich Wilson (Vice-Chair). Staff members present were Janine Miller, Paul Truster, Mary Shena and Susan Binnie. Scott Kerr and Alan Treleaven were present for part of the meeting.

1. The Committee is reporting on five matters:

- A submission to the Civil Rules Committee in response to a draft rule prepared by the Ministry of the Attorney General for mandatory mediation in civil cases in Ontario (Information Item)

- County and District law libraries

    a) Library Accounting from Finance Department (Information Item)
    b) Future Directions for Long-term Library Funding (Information Item)
    c) Provision for Systems Maintenance in County Law Libraries (Policy Item)

- A proposal to request the Chief Executive Officer to designate a staff member to maintain regular contact with the Lawyers Professional Indemnity Company in areas pertinent to the Committee's responsibilities (Policy Item)

- A report from the Post-Call Advisory Group on Enhanced Continuing Legal Education (Policy Item)

- Explanation of a competence education proposal (Information Item)

2. This report contains:

- A short information item with a submission to the Civil Rules Committee, sent in response to the Rules Committee's request for submissions on a proposal for mandatory mediation and a draft rule for mandatory mediation in Ontario.

- A report on three matters relating to County law libraries:

    1. a request to the Finance Department for an accounting of funding received and distributed from 1992 to 1997;
    2. the setting up of a working group to consider approaches to long-term County library funding issues and the future of County libraries;

3. the establishment of a small discretionary fund to assist County libraries experiencing difficulties with information systems.

- A short report requesting the establishment of a liaison process through a Law Society staff member with the Lawyers Professional Indemnity Company to address developments relating to Professional Standards, Quality Assurance, Competence and Post-Call Education matters on a continuing basis.

- A report from the Post-Call Education Advisory Group outlining a plan to pursue the implementation of the goals approved by Convocation in January, 1997 as set out in the Report on Post-Call Education.

- An explanation of a new competence education proposal.

I CIVIL JUSTICE: MANDATORY MEDIATION, SUBMISSION ON DRAFT RULE (Information)

3. In response to a request from the Civil Rules Committee for submissions on a proposal for mandatory mediation and a draft Rule on mandatory mediation, and with the agreement of Convocation, the Committee has made a submission to the Civil Rules Committee.

4. The submission was based on the principles outlined in Appendix B to the Report of the Professional Development and Competence Committee to Convocation, approved on 27 October, 1997. A copy of the submission is attached to this report as Item A.

II REPORT ON FUNDING OF COUNTY AND DISTRICT LAW LIBRARIES

A. LIBRARY FUNDING - ACCOUNTING FROM 1992 TO 1997 (Information)

5. In October, the Committee requested that the Finance Department examine the collection and distribution of monies for County and District law libraries for the period from 1992 to 1997 and provide an accounting for the Committee.

6. On October 17, 1997, Rich Wilson, Wendy Tysall, Dave Carey and Janine Miller met and examined the collection and distribution of funding for the period July 1, 1995 to December 31, 1997. At the Committee's meeting on 13 November, Rich Wilson and Janine Miller reported to the Committee on the results of that discussion. While accepting the funding position as set out by Mr. Wilson and the Director of Libraries, the Committee concluded that a full accounting for the period from 1992 to 1997 was required to satisfy the Committee's requirement for information both in terms of its responsibility to Convocation and its accountability to the profession.

7. The Committee recognized that the demands on the Finance Department in relation to preparation of the 1998 Budget had prevented the statements being prepared for November Committee Day. The Committee requested a full accounting, preferably in time for its next meeting on 8 January, 1998 (i.e. by mid-December) and suggested that Michael Adams be involved in any meetings on County library financial statements. The Committee also invited David Carey to attend the meeting on 8 January, 1998 to assist in the review of the statements on County library funding.

B. FUTURE DIRECTIONS FOR LONG-TERM LIBRARY FUNDING (Information)

8. In September, 1997 the Committee identified the issues of long-term library funding and the future of the County libraries as major issues for 1997-98.

9. The Chair indicated that the focus of the Committee on short-term funding issues since September had delayed consideration of possible approaches to these major County library issues.

10. A working group was formed to consider whether the Committee should be making any major proposals to Convocation in 1997-98 on the long-term future of the County libraries. The members are:

Susan Elliott(Chair)	Rich Wilson
Michael Adams	Janine Miller (staff)
Ron Manes	Susan Binnie (staff)

11. The group was asked to bring an initial report to Committee in January, 1998.

C. PROVISION FOR SYSTEMS MAINTENANCE IN LIBRARIES (Policy)

12. The Director of Libraries reported on the installation of information systems in the County libraries and on training sessions for County librarians in the use of the computer systems and electronic research. While most County libraries now have operational electronic information systems, some are reporting continuing difficulties due to configuration problems.

13. The Director commented on motions passed by the County and District Law Presidents Association ("CDLPA") Library Committee at its meeting on 10 October, 1997. (Copies of the motions were to be circulated to Committee members and are attached to this report as Item B.) The first motion raised three matters concerning information technology of which the first two had already been addressed. The third requested the Law Society to:

> *... provide a central support person on a one-time basis for a short term contract for consistent installation of software and for reasonable standardization of systems and for recommendation as to training of local staff or volunteer person on the use of these systems.*

The Director of Libraries recommended to the Committee a limited allocation of County library funding for this purpose.

14. The Committee felt strongly that local associations should provide for maintenance of their own systems in future years by entering into agreements with local suppliers. These arrangements should be a priority for associations under future budgets. However, with a view to assisting those associations currently experiencing difficulties, the Committee endorsed the allocation of a small capital fund from existing library funds for this purpose, with assistance being available only to overcome configuration and initial operating problems.

15. The Committee asks Convocation to approve the recommendation that the Chief Executive Officer authorize the Director of Libraries at her discretion to offer assistance to associations that continue to have difficulties with the set-up of their systems.

III COMMITTEE LIAISON WITH THE LAWYERS PROFESSIONAL INDEMNITY COMPANY - COMMITTEE REQUEST TO CHIEF EXECUTIVE OFFICER (Policy)

16. The Committee recognizes that there are areas where current or future activities of the Lawyers Professional Indemnity Company ("LPIC") will have an impact on the responsibilities and work of Law Society Committees. This is the case for the Professional Development and Competence Committee in relation to such issues as competence, professional standards, post-call education, and quality assurance.

17. The overlap of concerns between the Committee and LPIC became evident during recent discussions of Committee members and LPIC staff on quality assurance matters (including discussions at a special Committee meeting on 28 October, 1997). In this instance, Committee members and LPIC staff considered the role of LPIC in maintaining competence and, with the assistance of a short paper prepared by Malcolm Heins and Karen Bell, discussed the allocation of responsibilities for maintenance of standards in the light of LPIC's new risk management program. (A copy of the LPIC paper is attached as Item C.)

18. The Committee wishes to bring the possibility of common issues or overlapping interests to the attention of Convocation. The Committee has concluded that it is necessary, or at least desirable, for its work that members have an awareness of planning and discussions by LPIC in relation to the Committee's fields of interest *before* LPIC sets new policies or directions. The Committee concluded that reports from LPIC's Board of Directors tend to come too late in the process of LPIC policy development to be of assistance to the Committee in planning its own work.

19. The Committee supports the principle that there should be regular liaison between Law Society staff and LPIC staff to discuss matters including competence, professional standards, quality assurance and post-call education. In the Committee's view the Chief Executive Officer should be asked to assign a Law Society staff member to take responsibility for liaison tasks in these areas. At the same time the Committee recognizes that any liaison principle should take account of the need to maintain an arms-length relationship between LPIC and the Law Society.

20. The Committee therefore asks Convocation to affirm the recommendation that the Chief Executive Officer be requested to appoint a staff member or members to undertake regular liaison with LPIC on matters including competence, professional standards, quality assurance and post-call education.

IV INTERIM REPORT OF THE POST-CALL ADVISORY GROUP ON ENHANCED CONTINUING LEGAL EDUCATION (Policy Item)

21. Recommendations #2, 3, and 4 in the document *Post-Call Learning For Lawyers: Report and Recommendations of the MCLE Subcommittee* were adopted by Convocation on January 24, 1997. These recommendations included the appointment of a CLE Advisory Group (reporting to the Professional Development and Competence Committee) to investigate a framework for "enhanced continuing legal education" ("ECLE") in Ontario and also certain specific action plans aimed at CLE enhancement.

22. The interim report of the Post-Call Education Advisory Group on ECLE is attached as Item D. The report proposes the establishment of a Liaison Committee on which not-for-profit continuing legal education providers and other interested parties would be represented. In addition, the Law Society and Canadian Bar Association-Ontario would host a two-day symposium in Toronto (January 1998), at which the Liaison Committee and as many of the 46 CDLPA-CLE liaisons as possible would discuss specific measures for CLE enhancement, particularly those affecting the delivery of programming outside large metropolitan centres.

23. Initial funding for these activities is available from funds remaining in the 1997 budget for implementation of the Report on Post-Call Education, of which about $20,000 remains.

24. Additional potential funding for the two-day symposium on CLE enhancement may be available from the legal publishers responsible for publishing the *Ontario Reports*. The 1994 extension of the agreement between Butterworths and the Law Society includes a provision that

> *....Butterworths shall continue to provide funding for an annual symposium in an amount equal to $5000.*

This possibility will be pursued with Butterworths by the Director of Libraries.

25. Convocation is asked to approve the establishment of the Liaison Committee, the two-day proposed meeting on enhanced CLE and certain other enumerated activities supporting the achievement of enhanced CLE, as part of the implementation process for the Post-Call options adopted in Convocation on 24 January, 1997.

V. COMPETENCE EDUCATION

26. A proposal for a new program of competence education came before the Committee in June, 1997. At that time, it was agreed that the proposal deserved serious consideration and should be reviewed in the fall of 1997. It was also recognized that the proposal had potential implications for the provision of CLE delivery throughout Ontario. In September, the Committee agreed to keep the issue under consideration.

27. The Committee revisited the proposal in November, 1997 and concluded that, in light of recommendations for enhanced CLE, the proposal had sufficient interest that it should be discussed in a preliminary way with other not-for-profit providers of continuing legal education.

28. The Vice-Chair of Professional Development and Competence, Larry Banack, will provide details of the discussions of the competence education proposal with other providers of CLE.

ITEM B

COUNTY AND DISTRICT LAW PRESIDENTS ASSOCIATION

MOTIONS approved at the October 10, 1997 CDLPA Library Committee Meeting

1. Networking Standards/Support for Computers
Support for Installation & Standardization

Be it resolved that the Law Society immediately provide information on networking software standards to Associations; and

That ongoing support for day to day local networks or computers be provided locally in each Association; and

That the Law Society provide a central support person on a one-time basis for a short term contract for consistent installation of software and for reasonable standardization of systems and for recommendation as to training of local staff or volunteer person on the use of these systems.

MOVER: Bill Taggart SECONDER: Sherry Martin

CARRIED

2. Management details of partnership between Law Society and Library Committee - letter re: discussion of in relation to County Law Library system

Be it resolved that the Executive develop a letter to be reviewed by Plenary seeking permission from the Presidents for the CDLPA Library Chair to meet with the Treasurer to discuss the management details of the partnership between the Law Society and the Library Committee in relation to the County Law Library system.

MOVER: Duncan Fraser SECONDER: Rob Filkin

CARRIED

ITEM D

Professional Development and Competence Committee
Interim Report
November 13, 1997

Enhanced Continuing Legal Education

Prepared by the Post-Call Education
Advisory Group

This report has been developed by the Post-Call Education Advisory Group, consisting of the following members.

Benchers:

W. Michael Adams, *Gibson & Adams*
Larry A. Banack [Chair], *Koskie, Minsky*
Kim A. Carpenter-Gunn, *Waxman, Carpenter-Gunn*
E. Susan Elliott, *Good & Elliott*

Staff:
Sophia Sperdakos
Alan Treleaven
Paul Truster

Outside organizations and individuals:
The Law Society gratefully acknowledges the contribution of members from other organizations and firms, who have given generously of their time, expertise and creativity.

Marc Bode, *Bode & Associates*
Brian D. Bucknall, *Osler, Hoskin & Harcourt* (for the Canadian Bar Association-Ontario)
Alexandra Chyczij (for the Advocates' Society)
G. Ross Davis, *Bennett Best Burn* (for the Canadian Bar Association-Ontario)
Professor Bruce P. Feldthusen (for the Faculty of Law, University of Western Ontario)
Heather McArthur, *The Canadian Bar Association-Ontario*
Jackie E.M. McGaughey-Ward, *Miller, Maki*
Paul M. Perell, *Weir & Foulds*
Elaine S. Pitcher, *Wishart & Partners*
Timothy D. Ray, *Beament, Green, Dust* (for the Advocates' Society)

Note: The enclosed report follows from a series of meetings of the Post-Call Education Advisory Group. The Group has not at this writing sought the formal approval of the Report by the organizations represented in it.

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EXECUTIVE SUMMARY

On January 24, 1997, Convocation adopted a recommendation requiring the Law Society to "assemble an advisory group [the "Group"] whose short term goal is to define planning needs for post-call education and the means to meet those needs". The Group has pursued the goal by contemplating the infrastructure required for Enhanced Continuing Legal Education (ECLE)--an approach aimed at rendering CLE more

- affordable
- accessible
- responsive to the needs of practitioners outside larger centres

characterized by a diversity of delivery methods and resources including some or all of the following:

i. intensive discussion groups in addition to traditional lecture/panel live programs

ii. annotated checklists, information kits and similar publications

iii. mechanisms for participant self-testing

iv. the Internet and Web-site-based discussion groups

v. videos (i.e. produced as videos, not as incidental records of live programs)

The Group has proceeded on the premise that if CLE in Ontario is suitably enhanced, the Bar will respond by participating in significantly more CLE than at present.

To achieve the greatest co-operation and co-ordination of efforts among not-for-profit providers and others with an interest in CLE, an ongoing liaison committee (the "Liaison Committee") is proposed, embracing representatives of LSUC, CBAO, CDLPA, LPIC, the Advocates' Society, Legal Aid and others. The Group also finds an appropriate role for LPIC in making loss prevention information available to not-for-profit CLE providers and in contributing towards the cost of producing CLE programs that have substantial loss-prevention implications.

To maximize availability of live ECLE outside metropolitan centres, providers should devote resources to supporting CLE development in counties and districts. Increased co-operation between and among the C & D law associations and the largest not-for-profit providers is desirable.

The Liaison Committee should have access to adequate funding in case it should decide that a project administrator or the assistance of consultants is desirable.

Providers should adopt common methodologies for improved data collection and analysis regarding CLE attendance and effectiveness--including, perhaps, a common course evaluation form.

To encourage better use of technology in ECLE delivery, the Liaison Committee should report on available delivery options for publishing (hard-copy and electronic, specifically including the Internet) and for satellite delivery.

To further the achievement of equity and diversity within the profession, providers must be concerned to see that equity issues are appropriately addressed in programs, that programs are free of discriminatory material, and that members of diverse groups are encouraged to participate in program design, development and presentation; to this end, the Liaison Committee should itself undergo appropriate training as may be necessary. Similarly, programs should, where appropriate, address issues of ethics and professional responsibility.

The efforts of the Liaison Committee should contribute to achieving a consensus throughout the profession that CLE is a critical resource in enhancing competence, and an essential element of professional life.

It is hoped that such funding in support of the above initiatives as the Liaison Committee needs can be secured at least in part by application to the Law Foundation of Ontario.

INTRODUCTION

On January 24, 1997, Convocation adopted Recommendations 1, 2, 3, and Option 1 of Recommendation 4 in the Post-Call Education Subcommittee Report (*Post-Call Learning For Lawyers: Report and Recommendations of the MCLE Subcommittee*). The effect was to defer a decision on the introduction of mandatory CLE until fall 1998, but, *inter alia*, to appoint a Post-Call Education Advisory Group (the "Group"). Recommendation 2 reads in part:

"The Law Society should...assemble an advisory group whose short term goal is to define planning needs for post-call education and the means to meet those needs, and whose long term goal is to oversee their realization...".

The short term goal is achieved in this report.

NEEDS AND MEANS

A. CO-OPERATION AND CO-ORDINATION

The Group identified a need for more co-operation and co-ordination among providers and other relevant bodies--to pool information and develop more sophisticated analyses of practitioner needs, and to facilitate such joint educational ventures as might prove desirable.

To address this need, the Group recommends the creation of a liaison committee (the "Liaison Committee") connecting the Law Society, the Canadian Bar Association--Ontario, the County & District Law Presidents' Association (CDLPA), the Advocates' Society, the Lawyers Professional Indemnity Company (LPIC), Legal Aid, and other interested parties--conceivably, other not-for-profit providers, legal associations such as AJEFO, law schools, and relevant government departments. Input from practitioners and from the public would be encouraged, in part via the World Wide Web.

Possible examples of joint not-for-profit provider activities the Liaison Committee could facilitate include:

- obtaining information on what other professions are doing to educate their members, with particular reference to technology and teaching methods

- investigating possible synergies between providers and law libraries

- developing a smoother continuum of educational experience from law school through articling, bar admissions and CLE

- obtaining information on new legislation and on changing professional standards, for use in designing more timely and relevant CLE programs

‣Common marketing initiatives, such as linked sites on the Internet, and in the longer term, perhaps, common advertising calendars or even a common CLE order centre on the Web

along with other initiatives described in this report.

The Group noted that LPIC is uniquely in possession of important information on sources of lawyer negligence, and has a natural interest in education calculated to reduce insurance claims. It reasonably follows, the Group concluded, that an appropriate role for LPIC in CLE matters is, first, to make such information available to not-for-profit providers who legitimately request it; and second, where programs from not-for-profit providers contain significant loss prevention aspects, to contribute to underwriting or subsidizing the cost of such programs. LPIC, of course, has laudably performed this role in the area of title insurance, by its sponsorship of the LSUC-CBAO-CDLPA program on *Title Insurance* (May 6, 1997).

The need for co-operation and co-ordination among providers and others with an interest in CLE is reflected in the Action Plans appended to the Post-Call Education Subcommittee Report (and endorsed by Convocation), specifically the following [from the Subcommittee Report, Tab 7, Appendix A]:

‣Encourage providers to assess learning supports and to provide input into action plans

‣Encourage providers to develop uniform statistic gathering systems

‣Work with LPIC to gather and disseminate information that will assist the profession in risk avoidance and enhancing competence.

‣Pursue discussions with LPIC on CLE incentives through LPIC premium credits

B. FOSTERING AND SUPPORTING ECLE DEVELOPMENT IN COUNTIES AND DISTRICTS

The challenge of delivering live CLE outside the most populous centres while keeping costs down has bedevilled providers for years. One promising approach is to encourage the development of live CLE in the counties and districts ("C & Ds"). While providers have made some progress in this direction, no one appears satisfied with the *status quo*. ("live CLE in the C & Ds" can be considered as embracing any CLE offered outside major centres like Toronto, using one or more local faculty though perhaps drawing on faculty from major centres as well, and consisting of live commentary instead of a mere video replay--of course, excerpts from video replays may be combined with live local commentary, and would be considered "live" for this purpose).

The Group believes that many law associations, either alone or in conjunction with other associations in their region, could produce a significant amount of local, relevant, cost-effective CLE if they had greater assistance from the major, not-for-profit CLE providers. The Group believes closer co-operation between and among C & D law associations and the largest not-for-profit providers would greatly assist in achieving this end. Different C & Ds will have different needs and no single approach to satisfying those needs will work for everyone. However, the Group believes that not-for-profit CLE providers could make it substantially easier for C & Ds to develop local live CLE by, for example,

(a) printing guidelines for developing and offering programs;

(b) developing program outlines and supporting materials that could be adapted by C & Ds to meet local needs;

(c) providing marketing information and expertise to the C & Ds;

(d) publicizing and recognizing the contribution of local volunteer faculty;

(e) providing training and, in some circumstances, administrative support for local volunteer faculty;

(f) providing access to a portion of the not-for-profit providers' Web sites and other resources

--which supports might collectively be termed "turn-key CLE"--and, perhaps,

(g) declaring a "professional education day" on which C & Ds would offer programs developed with the assistance of the above supports.

In short, the Group believes there are a substantial number of cost-effective measures that not-for-profit providers can undertake to make it easier for C & Ds to produce local, high-quality ECLE.

Similarly, providers could co-operate in publicizing mentoring initiatives and opportunities, helping to create an atmosphere in which mentoring is accorded increased importance as an educational activity. A higher profile for mentoring could particularly benefit sole practitioners, new practitioners, and those in locations where the absence of a large practitioner community makes the free sharing of information among practitioners impractical. Senior lawyers who contribute their time to mentoring would receive appropriate public or community recognition.

The Group observes that certain intensive small-group programs, particularly those that involve "learning by doing", often involve costly teacher training, low teacher/participant ratios, different course development issues, and potentially complex evaluation challenges (measuring the progress of the participant as well as the general effectiveness of the course). The liaison committee may find one of its greatest challenges in enlarging access to these programs--the most elaborate of which can occupy three to five days and prove very difficult to viably present outside larger centres.

Creating the infrastructure to support ECLE in the C & Ds is a substantial task. It would involve, for example, liaising with the C & Ds (preferably in person to some degree), and assessing each county's or district's level of interest in producing programs and its resources available for this purpose. The Liaison Committee should consider whether its own resources are sufficient to pursue this or whether an administrator of some kind should be retained on a contract basis.

The Group also posed but did not answer the question of whether, in some circumstances, CLE programming should be provided on a regional rather than county-by-county basis. Many counties may believe that alone they do not have the resources to support live CLE. The Liaison Committee may choose to examine whether co-operative efforts among a number of C & D law associations would better support live ECLE activity. There may be natural links that already exist among C & Ds in each judicial region of the province. The Group does not, however, assume that there is necessarily enough commonality between C & D law associations within each region to support a regional ECLE partnership. The Liaison Committee may further consider what natural linkages between law associations exist or could be developed to support live ECLE.

It is recommended that a working group of the Liaison Committee, in conjunction with CLE liaisons in the regions, develop a questionnaire to get as much specific information as possible concerning what practitioners across the province want from local CLE, how they want it delivered, how much they want to do themselves, and what they regard as the key components of competence that continuing education could foster in individual practitioners. Ideally, this questionnaire would be circulated in local newsletters for input by practitioners and discussed by each County Law Executive.

Action Plans

The recommendations in the Post-Call Education Subcommittee Report adopted by Convocation identified Action Plans that the Liaison Committee could pursue. Action Plans relevant to the above approaches include:

- Complete assessment of local law association interest in development of teacher training materials and CLE program outlines to assist in development of local CLE programs

- Report on investigation of possible annual [local] CLE institutes

- Possible annual [local] CLE institute pilot project

- Report on state of mentoring throughout the province and whether further efforts to improve are required

- Complete investigation into teacher training materials and local program development outlines

- Report on initiatives proposed or taken to broaden base of volunteer instructors

- Consider suggestions made during MCLE consultation process for improvement to program content, design, and presentation, and report on responses and proposed or implemented changes to facilitate CLE.

C. IDENTIFYING AND SERVICING MARKET NEEDS

Providers must understand practitioners' training needs to fulfil them. To make properly informed choices from a sometimes bewildering variety of CLE options, practitioners need better information than is often found in providers' promotional material. While providers have considerable on-the-job marketing experience, the Group believes a more systematic and sophisticated approach may better serve the profession. Accordingly, the Group recommends that providers represented on the Liaison Committee consider the extent to which it may be desirable to share and discuss information on program attendance, publication sales, course evaluations and similar market data. Providers should agree on improved methods of data collection and analysis, including, perhaps, a common course evaluation form and linked Web pages.

To produce ECLE individual providers must continue to ponder

- the efficacy of smaller ("bite-size") CLE programs
- more systematic and curricular approaches to programming
- a (preferably uniform) system of describing program levels (beyond crude subjective distinctions between "basic", "intermediate" and "advanced")
- incentives for increased program attendance by practitioners (earlybird, package, series or other discounts, "frequent flier points", etc.), and
- the appropriateness of addressing interdisciplinary as opposed to all-lawyer audiences.

A common course calendar and order centre have also been mentioned as longer-term possibilities. All such options could be discussed more meaningfully among providers working together in the Liaison Committee.

Action Plans

Action Plans for the Liaison Committee particularly relevant to identifying and serving market needs include:

- Report on feasibility of system for selling ECLE materials on a paper-by-paper basis
- Report on improved methods for notifying profession of program content and dates
- Revise Notice of Annual Membership Fee form to include section on continuing learning activities
- Encourage providers to develop uniform statistic gathering systems

D. DELIVERY MODES

The Group believes there are circumstances in which changes in the technology of CLE delivery will contribute to increasing access to CLE and/or cutting its cost. Moreover, the profession must be encouraged to welcome the inevitable and embrace promising technological resources that are becoming essential and unavoidable in our daily professional lives.

Specifically,

- the desktop publishing revolution has made it increasingly economical and efficient to deliver low-cost published CLE on paper; while

- electronic publishing--on diskettes, CD-ROM, e-mail and, perhaps most promisingly, the Intranet and Web--promises to play an increasing role in ECLE delivery (though it must not be assumed that all lawyers are presently computer-literate or even possess computers); and

The Group notes that publishing has traditionally been regarded by Ontario providers (unlike their counterparts in B.C. or the U.S.) as an afterthought, the mere residue of live programs; but that significant opportunities exist to use modern publishing technology to deliver excellent ECLE at low cost. While it is sometimes cynically averred that "lawyers don't read", the truth appears to be that lawyers *do* read, but primarily as required in connection with current (file-driven) needs; so that there may be an important niche to be filled in providing specific information kits or an electronic "help desk", with annotated checklists and precedents as appropriate, rather than merely (as so often at present) a miscellany of more-or-less-related papers.

To encourage better use of technology, the Liaison Committee should report on available delivery options in publishing (both on-paper and electronic, specifically including the Internet/Intranet) and satellite delivery.

Satellite delivery of live programs to locations throughout the province--as evidenced by the Law Society/CBAO/CDLPA joint programs *Child Support Guidelines*, *Title Insurance* and *Electronic Registration*--is perhaps uniquely capable of giving high profile to major programs, and may have potential for smaller or "bite-size" programs as well; notwithstanding that the programs named were all subsidized or underwritten by sponsors.

The Liaison Committee should consider what is the maximum dollar amount per year that it is appropriate to ask practitioners to spend for CLE sufficient to their needs; and should consider how technology may contribute to keeping costs within this maximum.

The Group also notes the importance of making CLE available in a diversity of formats addressing different learning styles and preferences, and suggests the Liaison Committee consider a common annotated directory of CLE papers (subsuming, for example, the present separate Law Society and CBAO indices) and possible synergies between providers and law libraries.

Action Plans

Action Plans for the Liaison Committee particularly relevant in this context include:

- Produce Report summarizing research on technology and delivery of CLE
- Report on feasibility of system for selling CLE materials on a paper by paper basis
- Report on ways to improve videotape production and delivery
- Report on improved methods for notifying profession of program content and dates
- Report on techniques to be implemented for improving written CLE materials to meet lawyer needs.
- Provide proposal for creating practice alert and management publication, and for enhanced publications-based CLE.
- Ensure steps taken to expand delivery and production of CLE programs and minimize cost

E. EQUITY AND ETHICS

Recommendation 10 in the Law Society's Equity Report (*Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*; see Convocation Material, May 1997, tab 5 p. 32) reads as follows:

Continuing Legal Education. *The Law Society, as part of its initiative to develop affordable, accessible, and relevant continuing legal education programming should ensure that this programming:*

(a) includes material designed to increase the profession's understanding of diversity/equity issues;

(b) encourages the participation of equality-seeking groups in its design, development, presentation, and attendance;

(c) uses material that is gender neutral;

(d) uses audio visual material that includes the faces and voices of equality-seeking groups;

(e) is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28 [of the Rules of Professional Conduct].

From this and other recommendations in the Equity Report were developed two Policy Governance Policies [see Appendix A to the Equity Report] which Convocation adopted on May 23, 1997. The first reads in part:

The Law Society is committed to the elimination of discriminatory practices in the legal profession.

The Law Society is committed to the achievement of equity and diversity within the legal profession...

The second reads in part:

In the implementation of the...[first policy] *the CEO shall not operate without...ensuring that in the Department of Education...(i) Bar Admissions and Continuing Legal Education materials continue to be designed to increase the profession's understanding of equity and diversity issues and are gender neutral, (ii) with respect to the Bar Admissions and Continuing Legal Education, members of diverse groups continue to be encouraged to participate in design, development, and presentation of materials and courses...*

While these provisions apply only to the Law Society, the Group believes they provide a proper foundation for all providers; that providers participating in the Liaison Committee should frame common policies accordingly; and that the Liaison Committee should itself collectively undergo appropriate training in strategies for achieving equity.

The Group notes that diversified program formats are relevant to equity (e.g., formats accessible by persons with disabilities); that fact-situations used in teaching should not reinforce stereotypes; and that equity issues under examination should include the accessibility of French-language CLE.

Similarly, providers should adopt procedures likely to ensure that programs address, where appropriate, issues of ethics and professional responsibility.

Action Plan

Action Plans for the Liaison Committee relevant to the pursuit of equity include:

- Report on initiatives proposed or taken to broaden base of volunteer instructors

F. COMPETENCE AND CULTURAL CHANGE

The Group recognizes a need to reinforce the belief--already held by many in the profession--that CLE properly considered is not merely a series of discrete uncoordinated products, but a critical resource in maintaining and enhancing competence and an essential element of professional life. As one member of the Group put it, "participation in CLE should be seen as important as getting clients. What's needed is a counterweight to the mentality that a respectable reason for not attending a program is, `I've got to see a client'". The creation of a vibrant culture of continuous learning is ultimately the object of the measures proposed in this report.

Action Plans

Relevant Action Plans include:

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

- Appoint CLE Advisory Group

- Evaluate Law Society's education priorities twice yearly

FUNDING

It is hoped that funding in support of the objectives noted in this report (and as more particularly defined in due course by the Liaison Committee) can be secured in part by application to the Law Foundation of Ontario.

MISCELLANEOUS

Copies of this report will be distributed, at a minimum, to Law Society working groups on Requalification and Specialist Certification, to CDLPA, and to identifiable not-for-profit CLE providers.

The Group will continue to oversee realization of post-call learning enhancement while reporting to the Professional Development and Competence Committee, as provided by the Report to Convocation in January 1997.

APPENDIX

A. Possible schedule of ECLE key dates and consultation schedule

(draft as proposed by CBAO, subject to review by liaison committee)

November 1997

* Polling members of the Association of Canadian Legal Education Directors (ACLED) at their annual Toronto meeting on what the organizations represented have done to redesign and improve marketing efforts.

* Presentation at CDLPA's annual Toronto meeting on ECLE and the forthcoming questionnaire.

* LSUC/CBAO to finalize questionnaire in consultation with CDLPA's CLE liaisons.

November - December 1997

* Invitations to interested parties to join the Liaison Committee.

* Circulation of questionnaire to CDLPA CLE liaisons, requesting response by January.

January-February 1998

* Brainstorming session in Toronto hosted by the Liaison Committee for the CLE liaisons, including analysis of responses to questionnaire. Possible schedule:

January 31 [Sat.]

Evening reception and dinner at News Theatre [satellite transmission facility]--review of CDLPA response to December questionnaire--roundtable in which CDLPA delegates describe *status quo* in their respective regions, possible improvements, etc. Tour of facility, discussion of satellite process.

February 1 [Sun.]

Morning-to-midafternoon working session on "how we can make the CLE system work better (identifying and prioritizing needs; formats, length, timing; interactivity; levels of service desired by different counties; costs and financing; identifying regional resources, etc.) [Perhaps followed within a few weeks by a CLE Liaison Committee "further thoughts" meeting, building on findings of brainstorming session].

March 1998

* Day-long Liaison Committee meeting with marketing consultant re: primary marketing research, marketing audits, etc.

April 1998

* Day-long meeting with consultants on adult education and distance learning, including use of the Internet.

May 1998

* Day-long meeting on publications, hard-copy and electronic.

June 1998

* Day-long meeting on technology, comparative systems analysis [i.e. as between not-for-profit providers], linking databases to share statistical information, program evaluations, promotional material.

July 1998

* Day-long meeting on technological innovation, with input from US CLE representatives.

August 1998

* Day-long meeting on speaker/chair preparation, faculty training, best methods for "staging" major programs.

The Advocates Society plans an Advocacy Training conference for the spring of 1998, aiming to "develop a consensus and generate some creative ideas to rationalize and improve advocacy training in Ontario", and in which members of the Liaison Committee are encouraged to participate.

B. Liaison Committee Action Plans with revised timetable

(Square brackets indicate revisions to wording used in the Subcommittee Report).

Accomplished as at October 15, 1997

- Communicate Statement of Principles and Expectations to the profession and other interested groups.
- Revise Notice of Annual Membership fee form to include section on continuing learning activities.
- Produce Report summarizing MCLE Subcommittee research on technology and delivery of CLE.
- Appoint CLE Advisory Group.
- Report by Advisory Group on defining planning needs.

By January 15, 1998

- Ensure that Bar Admission Course materials are placed in County libraries annually.
- Pursue discussions with LPIC on CLE incentives through LPIC premium credits [or program subsidies].
- Encourage providers to assess learning supports and to provide input into action plans.
- Work with LPIC to gather and disseminate information that will assist the profession in risk avoidance and enhancing competence [(intended to be ongoing)].

By April 15, 1998

- Analyze the basis upon which videotapes are sent to county libraries. Consider the effectiveness. Communicate information to counties.
- Report on feasibility of system for selling CLE materials on a paper-by-paper basis.
- Report on ways to improve video-tape production, delivery and cost.
- Report on state of mentoring throughout the province and whether further efforts to improve are required.
- Encourage providers to develop uniform statistic gathering systems.
- Report on improved methods for notifying profession of program content and dates.

- Complete investigation into teacher training materials and local program development outlines.

- Report on techniques for improving written CLE materials to meet lawyer needs.

- Prioritize written learning support initiatives.

- Report on initiatives proposed or taken to broaden base of volunteer instructors.

- Provide proposal for creating practice alert and management publication, and for enhanced publications-based CLE.

- Ensure that the Chief Information Officer considers the role for computer systems to support learning needs.

By June 15, 1998

- Evaluate progress of action plans [such evaluation to continue] twice a year.

By September 15, 1998

- Complete assessment of local law association interest in development of teacher training materials and CLE program outlines to assist in development of local CLE programs.

- Report on investigation of possible [local] annual CLE institutes.

- [Conclude] consider[ation of] suggestions made during MCLE consultation process for improvement to program content, design and presentation, and report on responses and proposed or implemented changes.

- Possible annual [local] CLE institute pilot project.

- Ensure steps taken to expand delivery and production of CLE programs and minimize cost.

Not pursued by/not under the mandate of the Advisory Group

- Consult with Libraries Committee of CDLPA on improving county library facilities [(subject of separate LSUC liaison)].

- Include cost analysis in each report [(unnecessary to list as separate task)].

- Evaluate Law Society's education priorities [within ongoing purview of LSUC Professional Development & Competence Committee].

- Make decision on introduction of MCLE [within purview of Convocation].

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

(1) Copy of letter from Mr. Mary Eberts to Mr. John H. Kromkamp, Secretary, Civil Rules Committee dated November 10, 1997 re: Draft Rule on Mandatory Mediation. (Item A)

(2) Copy of a Presentation by the Lawyers' Professional Indemnity Company (Malcolm Heins, President and Karen K.H. Bell, Risk Management Consultant). (Item C)

Item: County and District Law Libraries

Mr. Wilson presented for Convocation's approval the recommendations in the Report concerning provision for systems maintenance in libraries and committee liaison with LPIC.

Item: Post-Call Advisory Group on Enhanced Continuing Legal Education

Mr. Banack presented for Convocation's approval the recommendation in the Report dealing with the interim report of the Post-Call Advisory Group on enhanced Continuing Legal Education.

It was moved by Mr. Banack, seconded by Mr. Wilson that the following recommendations be adopted:

THAT the Chief Executive Officer authorize the Director of Libraries at her discretion to offer assistance to associations that continue to have difficulties with the set-up of their systems.

THAT the Chief Executive Officer be requested to appoint a staff member or members to undertake regular liaison with LPIC on matters including competence, professional standards, quality assurance and post-call education.

THAT the establishment of the Liaison Committee, the two-day proposed meeting on enhanced CLE and certain other enumerated activities supporting the achievement of enhanced CLE, as part of the implementation process for the Post-Call options adopted in Convocation on January 24th, 1997 be approved.

Carried

THE REPORT WAS ADOPTED

Report of the Professional Regulation Committee

Meeting of November 13th, 1997

Ms. Cronk presented the Report of the Professional Regulation Committee.

Professional Regulation Committee
November 13, 1997

Report to Convocation

Purpose of Report: Decision-Making

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

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

Eleanore Cronk (Chair)

Gavin MacKenzie (Vice-Chairs)
Niels Ortved
Harriet Sachs

Marshall Crowe
Gary Gottlieb
Laura Legge
Hope Sealy

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

2. This report contains the Committee's proposals for

- endorsement of a *pro bono* duty counsel program to be administered by the Advocates' Society;
- a written protocol for the involvement of complainants in the Law Society's discipline process; and
- prescription of a new form, the Private Practitioner's Report, incorporating the "self-reporting" model for lawyers' trust accounting information.

PRO BONO DUTY COUNSEL AT DISCIPLINE HEARINGS

A. BACKGROUND

3. In January 1997, the previous Committee was instructed by Convocation to study the feasibility of a *pro bono* duty counsel program at discipline hearings. Currently, the Law Society provides duty counsel only at Discipline Convocation.

4. The previous Committee reviewed a staff discussion paper on the issues and canvassed other legal organizations[1] for input on the need for such a program, design issues and how or by whom the program should be run.

5. The Advocates' Society, in meeting with the previous Committee's representatives in June 1997, indicated that it was prepared to administer a duty counsel program.

B. THE ADVOCATES' SOCIETY'S PROPOSAL

6. Discussions within the Advocates' Society, including consultations at the Board level, took place in the fall of 1997, and included consideration of proposed features for the program.

7. Ms. Sachs, president of the Advocates Society, reported to the current Committee on the status of the Board's discussions, and her report appears at Appendix 1.

8. While the report should be read for details of the proposal, in brief, the Advocates' Society is prepared to administer the program.

9. The first phase of the program, to be implemented as soon as possible, would consist of provision of *pro bono* duty counsel on Law Society discipline hearing days to assist lawyers appearing before discipline panels who are unrepresented. No means test would be required before this assistance is available. This is essentially what occurs at Discipline Convocation with *pro bono* duty counsel.

10. The Advocates' Society would compile a roster of lawyers from its membership, with certain minimum qualifications required.

11. Training for the program, it is proposed, would be provided by senior members of the bar and facilitated through the Law Society. The proposal would see the training program held in February 1998 which would allow the first stage of the program to begin in March 1998.

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[1]The Canadian Bar Association, The Advocates' Society, County and District Law Presidents Association, Metropolitan Toronto Law Association and Criminal Lawyers Association.

12. A second phase would consist of the provision of *pro bono* services, beyond those performed by duty counsel, for example in contested hearings where lawyers are unrepresented. A means test would be required, and the question in this respect is whether the Law Society would be prepared to fund the means test.[2]

C. POLICY DISCUSSION

13. The following provisions of the Role Statement are relevant to a discussion on this issue:

> 1.3 *...We can ask in respect of every program and activity of the Law Society (actual or proposed): "Does it qualify as governance of the profession?" or "Is it an essential function of governing the profession?"*
>
> 3.1 *It is sometimes assumed that the public interest must necessarily be opposed to the interest of the profession and that, in fulfilment of its duty to govern in the public interest, the Law Society can give no consideration to the interest of the profession. This is not so. Ideally, what is in the public interest will also be in the interest of the profession. It is only when the two interests conflict that the Law Society must subordinate the interest of the profession to that of the public.*
>
> 8.3 *Every activity and program of the Law Society must...contribute to the advancement of justice and the rule of law. If it fails to serve that purpose it cannot be a legitimate activity of the Law Society.*
>
> 8.4 *The fact that a particular activity can be said to advance the cause of justice and the rule of law, however, is not sufficient to qualify it as an appropriate activity of the Law Society. Many other organizations and individuals share responsibility of advancing the cause of justice and the rule of law in Canada. For example, every individual lawyer has that duty. Other bodies with responsibility for justice and the rule of law include the judiciary, the courts and government at all it levels.*

14. The broad policy objectives in considering a duty counsel program at the hearing level are:

- to provide a measure of consistency with Convocation in providing assistance to members involved in the discipline process, and
- to increase the efficiency and timeliness of the hearing process.

15. It is against these objectives that the practical questions about a program design and delivery and the Law Society's role therein, should be considered by Convocation.

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[2]The financial impact on the Society's annual budget would be a factor to be considered in this respect.

16. A key question is whether it would be seen as a conflict or be an actual conflict for the Law Society's regulatory arm to administer a duty counsel program for lawyers appearing before its disciplinary tribunals. The broad issue is whether the necessary objectivity and independence of the regulatory scheme, from the lawyer's *and* the public's perspective, would exist if the regulator were involved in providing the means through which duty counsel could be obtained for a hearing.

17. The Committee considered this issue and determined that to maintain the requisite independence in all enforcement processes, the program should be delivered by another group or organization.

18. The Committee's view is that the proposal for the first phase of the program is a workable scheme to assist lawyers and the hearing process, while ensuring that no conflict or appearance of conflict exists on the part of the Law Society.

19. The Committee also agreed that the effectiveness of the first phase of the program should be assessed before expansion to include other *pro bono* services could be considered.

20. In reviewing the proposal set out in Ms. Sachs' report, Convocation may wish to consider the purpose of and the goal to be achieved through a duty counsel program. To that end, the primary question may be whether such a program will assist the regulatory process and to whom, primarily, that assistance is provided: lawyers, the Society, the public, or a combination thereof.

Options and Alternatives for Decision by Convocation

21. Convocation should decide whether, with respect to the first phase of the program:

    a. As a feature to be introduced into the Law Society's hearing process, the first phase of the proposed program to be administered by the Advocates' Society should be implemented;
    b. Whether the design from the Law Society's perspective is workable;
    c. Whether other features should be added to the design or its implementation.

PROTOCOL FOR COMPLAINANTS IN THE LAW SOCIETY'S DISCIPLINE PROCESS

A. BACKGROUND

22. At its September 11, 1997 meeting, the Committee struck a working group[3] to formulate a written "protocol" for the involvement of complainants in the Law Society's discipline process, a new issue which arose for the Committee's consideration in August 1997.

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[3]Members of the working group are Gavin MacKenzie and Hope Sealy, assisted by staff members Lesley Cameron, Sheena Weir and Jim Varro.

23. The Committee considered the working group's discussion paper at its November 13, 1997 meeting, and approved the protocol. The protocol, appearing at paragraph 61 of this report is now presented for Convocation's consideration and adoption.

B. THE COMMITTEE'S REVIEW

24. In addition to a review of current departmental procedures involving complainants[4], the Committee noted the Society's previous review, on a narrower basis, of this issue at a policy level. The specific focus was on representations on behalf of complainants at discipline hearings, in the form of "victim impact statements" akin to those used in the criminal justice system.

25. Convocation adopted a policy in that respect in May 1992, discussed in Appendix 3.

26. Amendments to the process in the legislative reform package (included in Appendix 4 and changes suggested through Project 200[5] (discussed in Appendix 2) were also reviewed.

27. In its research on the subject, the Committee:

a. considered the processes for complaints and discipline at the Law Society of British Columbia and the Law Society of Alberta;
a. reviewed the investigative processes at the College of Physicians and Surgeons of Ontario;
a. had discussions with a victim rights advocacy organization; and
a. reviewed the Government of Ontario's 1995 *Victims' Bill of Rights* and related initiatives,

all of which is discussed below.

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[4]There are essentially three departments through which complainants interact with the Society in the investigation and discipline streams: the Complaints, Audit and Investigations and Discipline Departments. Relevant information on the processes in these departments is included in Appendices 2 and 3. Each department maintains its own systems for initiating investigations based on information from complainants, as appropriate, or responding or providing information to complainants during and at the conclusion of an investigation or prosecution. As the Law Society routinely uses these systems in dealing with complainants from intake through to prosecution and disposition, there is effectively a loosely structured, albeit not formalized, protocol, which certainly can provide the basis for a written protocol on the nature and extent of complainants' involvement in the process.

[5]Project 200 is the Society's management initiative involving an in-depth study and analysis of operational efficiencies, identification of process re-design principles and an implementation strategy. The Project team which studied the regulatory departments has issued a report on the redesign of those departments.

28. All of the above helped to form the basis for the draft written protocol.

Other Jurisdictions

British Columbia

29. The Law Society of British Columbia ("B.C.") advised that it has no written protocol for the involvement of complainants in the complaints or discipline processes.

30. Its investigative procedures require that complainants be kept informed of the status of investigations, including the transmission of lawyers' responses to complainants for comment and the ongoing exchange of information that flows from that.

31. B.C. has no policy statement on victims' rights or victim impact statements and complainants are not granted independent status before hearing panels or Convocation.

Alberta

32. As in B.C., the Law Society of Alberta ("Alberta") has no formalized protocol for dealing with complainants, but has a process for complaints investigation and discipline which responds to matters of complaint.

33. To a certain extent, the *Legal Profession Act* and the Rules thereunder outline the process for investigations. Some features directly related to complainants' involvement include:

a. summarizing in writing a complainant's oral complaint;
a. protecting the identity of the complainant in "exceptional circumstances";
a. providing notice to the complainant of the referral of a matter for consideration for disciplinary action and the result.

34. Alberta has a mediation stream, as an alternative to a more formal investigation stream, which can be accessed at the complainant's option as a means of dealing with a complaint.

35. Information about the formal investigative process is provided to complainants through a document entitled "Information for Complainants". Brochures are also produced for public consumption on the process and a fees mediation service offered through the Law Society.

36. The investigatory process includes a review option for complaints dismissed at the investigatory level, before an Appeal Panel of three benchers, including one lay bencher.

37. At the discipline level, other than appearing as witnesses as required, complainants do not have the right to make submissions or otherwise enter into the hearing process.

Other Professions

38. The College of Physicians and Surgeons of Ontario ("the College") advised that it has no formalized policy on dealing with complainants. The College publishes a brochure outlining the complaints process, and also makes available an instructional videotape on the complaints and discipline processes.

39. As at the Law Society, on an ongoing basis, the College's procedures are routinely followed in obtaining information from complainants and exchanging further information as the matter proceeds.

40. The *Regulated Health Professions Act*[6], under which the College is constituted, establishes the investigatory scheme, including certain information required to be provided to complainants, in the Health Professions Procedural Code (Schedule 2 to the *Act*). The Code speaks to two separate streams of investigation.

41. The investigation of complaints about a member's "conduct or actions", which must be submitted to the College in writing or recorded on a tape, film, disk or other medium, is investigated by a panel of the Complaints Committee.

42. The Complaints Committee issues a written decision and reasons which are sent to the member and the complainant.

43. If the investigation is not completed within 120 days, the Health Professions Board on application by the member or the complainant can require that the Complaints Committee dispose of the matter. If that is not done within 60 days, the Board can take the matter in hand and determine it or otherwise pursue investigation of the matter, including appointing an investigator as discussed below.

44. For matters dealt with in this stream, the complainant, or the member complained of, has a right of review before the Health Professions Board, before which the member and the complainant have the opportunity to make submissions.

45. The Board's decision in writing is given to the member and the complainant.

46. The other stream encompasses investigations based on the Registrar's belief on "reasonable and probable" grounds that a member has committed an act of professional misconduct or incompetence, a referral of a matter through the Executive Committee from the Quality Assurance Committee about a member, or a referral from the Complaints Committee to the Registrar with a request for an investigation.

47. The Registrar may appoint an investigator who reports the results to the Registrar, who in turn reports to the appropriate Committee.

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[6]S.O. 1991, c. 18.

48. In matters that proceed to a discipline hearing level, certain provisions of the Code relate specifically to complainants, including:

    a. hearings open to public, except in certain specified circumstances;
    b. non-publication orders respecting the identity of a witness, at the witness's request, in a case involving the member's misconduct of a sexual nature;
    c. availability of transcripts to "any person", at the person's expense, of the proceedings not otherwise subject to a publication ban.

49. A copy of the decision and reasons of the discipline panel is given to the complainant if the matter was referred to discipline by the Complaints Committee.

50. Beyond investigations, the Code also provides for access to information by a person respecting certain aspects of a member's status, including information about suspensions and disciplinary or incapacity proceedings within a certain time frame.

51. The Code specifies that a person has the right to use French in all dealings with the College, including communications and hearings.

52. Amendments to the Code in 1993 relate specifically to the role of complainants in the discipline hearing process, and include the following:

    a. a non-party to the proceedings, which would include a complainant, with the hearing panel's permission may participate in the hearing to the extent allowed by the panel, which may include oral or written submissions and the ability to lead evidence and cross-examine;
    b. statements respecting the impact of sexual abuse on a patient may be submitted by the patient or the patient's representative if a finding of professional misconduct has been made;
    c. the College is to maintain a program to provide funding for therapy and counselling for persons as patients who were sexually abused by members.

Information from Victims' Rights Advocacy Organization

53. Gavin MacKenzie spoke with Priscilla DeVilliers, the founder of CAVEAT, a leading victims' rights advocacy organization.

54. Ms. DeVilliers emphasized that the bulk of CAVEAT's experience has involved dealing with victims of violent crime. She volunteered the following suggestions, but indicated that because of the above, her contribution may be of limited assistance to the Society.

55. While she was pleased to learn that the Society has a policy that contemplates discipline hearing panels receiving victim impact statements in written form on consent and *viva voce* evidence of complainants where the parties cannot agree on the content of a written statement, she emphasized that complainants should not have to take the initiative, and that the Society should avoid placing complainants in an adversarial setting if at all possible.

56. She recommended that the Society's policy encourage victim impact statements to be videotaped in a neutral setting. CAVEAT has made a similar recommendation to the Parole Board.

57. She also suggested that the Society bear in mind that "different victimizations call for different responses". Although she felt that her lack of familiarity with the Society's discipline process prevented her from being too specific, she encouraged the Society to devise a system that is sufficiently flexible to accommodate the needs of complainants who have been harmed in differing degrees and in different ways.

The Government of Ontario and Victims' Rights

58. On June 11, 1996, the government proclaimed in force the *Victims' Bill of Rights*[7], which establishes principles for the treatment and involvement of victims in the criminal justice system.

59. The government has also established Victim/Witness Assistance Program in 26 Ontario communities and in 1997 is expanding the existing Victim Crisis Assistance and Referral Service to 20 locations from 12.

60. The Bill, appearing at Appendix 5, includes a statement of principles in s. 2. To a large extent, the procedures in the investigation and discipline streams of the Society mirror these principles.

C. PROPOSED DRAFT PROTOCOL

61. The following are suggested features of a protocol governing the Society's interaction with and involvement of complainants:

Generally:

1. A Complainant should at all times be treated professionally and with courtesy, respect and candour by Law Society staff or outside investigators or counsel engaged by the Society with respect to the Complainant's matter.
2. A Complainant should have unimpeded access to information about the Law Society's regulatory processes.
3. The Society should dedicate itself to communicate with a Complainant in "plain language".
4. The Society should make every effort to communicate with a Complainant, if the Complainant so requests, in French.
5. The location of meetings at the Society with a Complainant, as much as practicalities permit, should be comfortable and convenient for a Complainant.

In the investigatory stage:

6. The Society should assist a complainant, where necessary, in recording a complaint about a lawyer for the purpose of an investigation by the Society.

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[7]S.O. 1995, c. 6.

7. A Complainant has a right to be informed of the status of the complaint with which he or she is involved. Accordingly, a Complainant should be regularly informed of and have the ability to access information on his or her complaint. For those matters investigated through the post-screening investigatory units of the Complaints Department and ongoing investigations in the Audit and Investigations Department (as a result of a matter directly referred to that department by a Complainant), a status report on the progress of the investigation should be provided at least every 90 days, unless otherwise agreed upon by the Complainant and the Society's investigator.
8. The Complainant should be appropriately and reasonably accommodated with his or her requests for meetings on the complaint matter with the Society as required for pursuit of the investigation, and in the scheduling of meetings with the Complainant as requested by the Society;
9. All written (including facsimile) or electronic communications from a Complainant should be acknowledged within 14 days of receipt by the Law Society. Telephone messages from a Complainant should be returned at the latest the next business day.
10. At the conclusion of an investigation, written reasons for not taking further action on a complaint (based on Law Society staff's or outside counsel's view of the matter, as the case may be) should be provided to a Complainant with an opportunity for review, in accordance with the complaints review procedures and the policies related thereto.
11. A Complainant should be advised of the disposition of a complaint by the Chair and Vice-Chairs of Discipline, other than an authorization for disciplinary action, within 14 days after notification to the member of the disposition.
12. A Complainant should be advised of the fact of an authorization for disciplinary action authorized by the Chair and Vice-Chairs of Discipline based on his or her complaint within 14 days of such a decision.

In the discipline hearing stage:

13. Discipline counsel should make themselves available to respond to a Complainant's inquiries or requests for interviews at any stage of the discipline process.
14. Unless a Complainant advises that he or she does not wish to be kept informed, discipline counsel should:
    i. Following service of a sworn complaint on the solicitor within the meaning of section 33(13) of the *Law Society Act*, write to all Complainants advising that a sworn complaint has been issued, setting out a brief explanation of the discipline hearing process and advising of a Complainant's right to be present at the hearing;
    ii. Once a hearing date is set, advise the Complainant of this date and any subsequent changes in this date;
    iii. Where practicable, advise the Complainant of significant decisions regarding the withdrawal or amendment of particulars with which that Complainant is involved;
    iv. Where practicable, advise the Complainant of any joint submissions as to penalty;
    v. Where a Complainant is a witness for the Society at a discipline hearing, adequately prepare the Complainant for the hearing;

vi. If the Complainant does not attend at the hearing, write to the Complainant advising of the final disposition of the sworn complaint and provide a copy of any written reasons of the hearing panel and/or Convocation;

vii. In the event of an appeal, advise the Complainant of the appeal, the hearing date of the appeal and the outcome.

15. he use of "victim impact statements" and the participation in and representation of a Complainant at discipline hearings will continue to be dealt with by the existing policy dated May 29, 1992, amended to provide for videotaped statements from Complainants where the Complainant and the parties to the proceeding agree. The policy should be brought to the attention of Complainants so that they are aware of the opportunity to provide a victim impact statement to the Discipline Committee.

D. DISCUSSION

62. The Committee believes the protocol appropriately reflects the principles which should govern the Society's interaction with complainants in the discipline process. The protocol itself incorporates and essentially codifies existing elements of the process applied routinely in communicating with, responding to and informing complainants at the investigatory and hearing levels.

63. The Committee also recognized that complainants interact, on some occasions extensively, with other departments of the Society. The office of the Compensation Fund is one example. Complainants who apply for compensation for losses suffered as a result of the dishonesty of a lawyer interact with Law Society staff in that area.

64. To the extent that the results of this review may apply in those situations, the Committee endorsed that application.

Options and Alternatives for Decision by Convocation

65. Convocation should determine whether:

a. the protocol as drafted realistically reflects what should be stated in the protocol;

b. all relevant features of a complainant's involvement in the Society's discipline process are covered;

c. the draft is sufficiently detailed, or whether more detailed or more broadly-worded statements are necessary;

d. the language is appropriate.

NEW FORM - THE PRIVATE PRACTITIONER'S REPORT

A. BACKGROUND

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

a. A substantial increase in the compensation fund levy (to be decided upon in the Society's budget process for 1998); and

b. A proposal for amendments to Regulation 708 which would change the manner in which members are required to report on their books and records.

67. Details of the second proposal, for the "self-reporting" model of trust account reports to the Law Society, are contained in an excerpt from the report at Appendix 6.

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

B. THE COMMITTEE'S RESPONSIBILITY

69. Convocation's approval of the self-reporting model required the Committee's recommendation for approval or prescription of a new form incorporating the new reporting scheme to ensure that it can take effect as soon as possible in 1998.

70. This essentially involved revisions to the current Private Practitioner Form (PPF) to replace the requirement for the filing the Public Accountant's Report to Lawyer[8]. The new form is designated the Private Practitioner's Report (PPR). A draft of the new form was circulated to benchers last month for comment, and feedback from the benchers has led to some changes in the draft which was reviewed by the Committee.

71. The Committee's responsibility in this respect, as it has been with the other forms, is to review the required changes and, if it so decides, recommend to Convocation that the form be prescribed in accordance with the rules.

72. The proposed PPR, incorporating amendments made by the Committee, together with explanatory information, is attached at Appendix 7.

The Requirement for a Committee's Proposal to Convocation

73. Section 16 of existing Regulation 708 provides that the certificate and the report are to be "in the form prescribed by the rules". Pursuant to Rule 1, amendments to the rules can be accomplished in only two ways:

a. By notice of motion given at the Convocation immediately preceding the Convocation at which the motion to amend the rules is made. (Notice has not been given in this case.)

b. By proposal in the report of a committee, followed by a motion in Convocation to adopt the proposal.

74. Appendix 8 contains the provisions of Paragraph 27 of subsection 62(1) of the *Law Society Act*, Section 16 of current Regulation 708, Rule 1 and

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

part of Rule 56 (subrules 56(1) to 56(5)) for reference.

75. Under the rules as currently worded, a committee proposal (effectively a recommendation) is the only way to introduce rule amendments to Convocation if notice of the amendment has not been formally given at the previous Convocation.

76. However, as the amendments to Regulation 708 will determine the nature of the rule change, and thus the language of a motion for Convocation to amend the rule, at present the extent of the Committee's recommendation was that the form be prescribed. Once the Regulation as amended is in place, the appropriate motion can then be brought before Convocation for the rule change to incorporate the prescription.[9] The rule amendment will involve the deletion of the requirements for the current Private Practitioner Form and the Public Accountant's Report to Lawyer.

C. DISCUSSION AND RECOMMENDATION

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

The Amendment

78. The amendment made by the Committee, reflected in the proposed form at Appendix 7, was to include the phrase, "to the best of my knowledge, information and belief" in the certificate by the lawyer at the end of the form, in paragraph (c) (at page 80 of this report) after the word "and" in the second line.

79. In the Committee's view, this allows the lawyer filing the form, in expressly adopting the information contained therein where another person has assisted the lawyer in completing or has completed the financial reporting section of the form, a measure of protection where reliance is based on that person to facilitate the *lawyer's* certification.

The Related Recommendation

80. An issue arose in the Committee's discussion on the requirement in the form to identify whether a person other than the lawyer filing the form completed the financial reporting information requested in the form, and the status of that person (reference is to page 74 in Appendix 7 of this report).

81. The concern was that a lawyer not engaging an accountant to complete this information may become the subject of a focused audit, on the assumption that the integrity of the financial reporting information would be greater, in the Law Society's eyes, if completed by an accountant. It was suggested that this portion of the form, therefore, be deleted, and included on a separate sheet.

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[9]This notice of this motion may be brought at the November 28, 1997 Convocation.

82. The Committee did not agree with the merits of the above argument, nor that that portion of the form should be deleted, for two reasons:

a. The profile for focused audits as currently planned did not include this feature;
b. Based on the design of the form, the Committee considered the information to be of distinct value in assessing the self-reporting model, and the extent to which the membership in fact engaged accountants to complete the financial information, within the two year "pilot project" timeline.

83. However, the Committee decided that Convocation should:

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

The Committee's Recommendation on the Form

84. The Committee recommends to Convocation that the Private Practitioner's Report, replacing the Private Practitioner Form and the Public Accountant's Report to Lawyer, be prescribed.

85. The Committee suggest the following motion for Convocation:

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

1. That the fiscal 1997 Private Practitioner's Report (as attached to the Secretary's copy of this motion) be prescribed, subject to the change identified in paragraph 2 below.

2. That the year specified in the title of the Private Practitioner's Report be altered from year to year so as to identify the year in question.

Options and Alternatives for Decision by Convocation

82. Convocation must decide whether:

a. To approve the new form, on the recommendation of the Committee;
b. The language in the above motion reflects the requirement for prescription of the new form.

PROPOSED POLICY ON PROVISION OF COMPLAINTS REVIEW THROUGHOUT ONTARIO

A. BACKGROUND

83. As a result of discussions between some lay benchers and the Treasurer, an issue respecting the availability of complaints review for complainants outside of Toronto was referred to the Committee for review.

84. Currently, complaints reviews are generally held at Osgoode Hall, although on occasion they have been held in Ottawa and London.

85. The issue is being explored as a means to increase the accessibility of this feature of the complaints process to complainants outside of the Metropolitan Toronto area.

86. Hope Sealy reviewed the subject and submitted her findings to the Committee.[10]

B. THE REVIEW

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

Complaints Review Hearings for 1996 and 1997

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

Out of Town Complaints Reviews

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

[10]Ms. Sealy's report was also circulated to all lay benchers for comment.

88. Of the 256 reviews held in 1996 and 1997, between 50 and 55, or about one-fifth, are for complainants residing outside of the Toronto region (not including about 14 where complainants reside outside of Ontario).[11] For matters outside of the city of Toronto proper, the number is approximately 106, or about 40% of the total.

89. The Callwood Committee's policy, referred to above, stated that "the existing function of Lay Benchers as Complaints Review Commissioners be continued and that Reviews occasionally be held in regional centres." [12] The rationale at the time was stated to be that "the purpose of occasionally holding Reviews in regional centres is to make this procedure more accessible to complaints throughout the Province".[13]

The Issues

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

- Which locations outside of Toronto would be appropriate or practical for the reviews?
- Are suitable facilities for the reviews available in those locations?
- Should the current complement of attendees for complaints review be rethought?[14]
- Respecting *pro bono* counsel, while two locations (Ottawa and London) have standing rosters of counsel for the reviews, could there be an increased problem from a conflicts perspective if counsel from a smaller centre attended for the reviews in that location?
- What are the costs associated with the proposal, and what priority should be given to any new financial outlay when assessed against the Society's financial commitments and resources?

A Suggested Approach

91. A pragmatic approach should be taken in addressing this issue.

92. With respect to the locations of centres other than Toronto for complaints review, two criteria should be used to determine them:

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

[12]First Report of the Special Committee on Complaints Procedures, February 1990.

[13]*Idem.*

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

- if Law Society facilities are available or if facilities are available at law schools, reviews should be held in those locations. This would effectively continue the scheduling of reviews in Ottawa and London, given the Bar Admission facilities in those cities;
- reviews should be held in locations where the lay benchers reside, or in the closest regional centres, as practicalities may dictate. It is recognized that this will change from time to time as the complement of lay benchers changes, and we regard this as a benefit.

93. For locations other than Toronto, as a cost saving measure, the Society need not send a clerk to assist with the review. Any duties that are now done by the clerk in those locations can be done by the lay bencher sitting on the review. Material for the review is always couriered to the lay bencher in advance of the review.

94. Suitable facilities for the review must be arranged in locations other than Toronto, Ottawa and London. This would, for example, exclude lawyers' offices. To the extent that the County and District Law Associations or the law schools may be able to assist in this regard, depending on the location, the Society should pursue those contacts.

95. If reviews are held in smaller centres, the increased potential for conflicts with the individual appearing as *pro bono* counsel to the review must be recognized. A conflicts check must be completed well in advance of each review to ensure that counsel has an opportunity in advance of the review to ensure that no conflict exists, and if one does exist, to allow time to arrange for alternate counsel.

96. Complainants should still be given the option to come to Osgoode Hall for the review, as a matter of their choice. The option for complainants to have the reviews heard in their absence should also be continued.

Cost

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

Security	$2400.00
Travel	$1000.00
Miscellaneous	$1000.00

98. The proposed 1998 budget (which has not been reviewed at any bencher level) is $4150.00, divided as follows:

Security	$2400.00
Travel	$1250.00
Miscellaneous	$ 500.00

99. The travel component of the budget, given that all lay bencher expenses are paid for by the provincial government, has been used for and is intended to cover staff travel to locations outside Toronto.

100. If the approach suggested above were implemented, with no clerk present at those locations, this portion of the budgeted funds could be allocated to the cost of facilities, if needed. It is also possible that if a conflict with *pro bono* counsel arises which can only be resolved by bringing in "outside" counsel, these funds could be used for any travel or accommodation costs of that counsel.

C. POLICY DISCUSSION

101. The availability of complaints review has been determined by Convocation to be an essential part of the process by which complaints are evaluated and determined. As part of that process, it is an element of the broad governance authority exercised by the Law Society over lawyers in the public interest.

102. The Law Society's Role Statement, specifically the Commentary which discusses the principles of governance in the public interest, states that The duty to govern in the public interest implies a responsibility to ensure that members of the public may inform themselves as to the manner in which that duty is being discharged...[15]

103. The openness of the process is inextricably linked to its accessibility.

104. The issue, however, is not whether the Society must ensure that complainants' access to the review option is absolute through the availability of complaints review in all centres in Ontario. It is whether the Society should establish and maintain a policy which will increase and maintain in some measure the availability of reviews outside of Toronto in a meaningful *and* cost-effective, rational way.

105. There is merit to instituting this policy. It would be give greater expression to the Society's dedication to govern in the public interest. In particular, it would indicate that a reasonable accommodation of complainants' interests is being made in this phase of the investigatory process.

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

Options for Discussion and Decision By Convocation

107. Convocation should determine whether:

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

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[15]Role Statement and Commentary, ¶ 2.6.

APPENDIX 1

ADVOCATES' SOCIETY REPORT ON
PRO BONO COUNSEL FOR DISCIPLINE HEARINGS

APPENDIX 2

THE COMPLAINTS/AUDIT AND INVESTIGATIONS DEPARTMENTS

1. With the exception of complaints regarding issues involving a member's handling of trust funds or where it appears that, by the nature of the complaint, a field investigation is required, virtually all complaints received by the Law Society about lawyers' conduct are handled by the Complaints Department.

2. Attached is a chart which illustrates the various steps in the process by which complaints are evaluated.

Summary of the Complaints Investigation Process

3. In practice, the Society requires that complaints be made in writing and forwarded to the Law Society.

4. In the past, virtually all complaints were investigated pursuant to a standard procedure which involved an exchange of correspondence between the member, the complainant and the Society.

5. However, alternative *screening* procedures have been developed to identify and deal with appropriate cases at the intake stage, thereby eliminating the need to employ the more cumbersome and intensive (largely paper) investigative approach typified by the standard procedure.

6. As currently structured, this work is performed through the Information Services and Telephone Complaints Resolution functions.

7. The majority of these complaints deal with minor disputes capable of quick resolution (e.g. late real estate reports, not returning telephone calls, etc.), matters which fall outside the Society's regulatory mandate (e.g. fee disputes, some negligence claims, some third party litigation complaints) and allegations of poor service or incompetence which are not of a sufficiently serious nature in themselves to warrant disciplinary action.

8. These screening procedures offer a range of disposition options which attempt to inject a degree of informality into the handling of the complaint. In particular:

   a. Extensive use of the telephone is made;
   b. Tight time lines are imposed on staff involved in these procedures to either maximize the chances of effectively resolving the dispute or, in cases where complainants are to be advised that their complaints do not fall within our regulatory mandate, to ensure that this information is conveyed to parties as soon and as clearly as possible;

c. A detailed letter explaining the Society's position is forwarded to the complainant, usually within three to four weeks of the receipt of the complaint.

9. In the *post screening* phase, certain procedures are employed when information from the member is required in order to properly dispose of the complaint.

10. In such cases, a letter is sent to the complainant within 24 to 48 hours acknowledging receipt of his or her complaint and providing general information about the procedures to be followed. Complaints can be forwarded to:

a. *A Preliminary Assessment Group Or Unit (PAU)* - While some cases require further investigation beyond this point, most complaints referred to this staff group are disposed of at this stage with a report to the complainant.

b. *Quality of Service Investigations (performed by the Complaints Investigation Unit (CIU)* - While complaints of this kind are sometimes remedied at the screening stage of the process, most are investigated using the standard procedure described above in order to identify and document the extent of the problem. Documentation is important at this stage. It also assists in the event the complainant disagrees with the investigator's position that disciplinary action is not warranted and requests a review of the matter by a Complaints Commissioner, who may ultimately recommend a disposition different from that of the investigator.

c. *Discipline Investigations Unit (DIU)* - This group investigates complaints that disclose concerns which may warrant disciplinary action. In practice, the DIU and the Audit Department interact frequently. The procedures used by the DIU are intended to produce investigations which meet the standard required in a formal hearing setting.

d. *Rule 27 and 28 Investigations (within the DIU)* - Complaints alleging sexual harassment or discrimination are referred to two designated staff investigators who have received specific training to assist them in dealing with these matters. All relevant parties are personally interviewed and an investigative report is referred to the Discipline Authorizations Group (i.e. the Chair and Vice-Chairs of Discipline) in each case.

e. *Outside Counsel Investigations* - Nearly all matters investigated by outside counsel involve complaints against Benchers. The practice of referring these matters to outside counsel stems from the recommendations of the Yachetti Committee Report on Discipline Reforms in 1990. In 1996, Convocation approved further refinements to this procedure which provide complainants with access to the complainants review procedure in situations where outside counsel concludes that no action by the Law Society regarding the complaint is warranted.

11. In all of the above procedures, a formalized exchange of correspondence is undertaken with the complainant, using as much as possible a "plain language" approach.

12. A series of computer "action codes" for the various investigatory functions are entered on the Complaints database and allow individual investigators and managers to track the progress of investigations. They also act as a tickler system for future action by investigators on a particular matter. "Days to next action" provides a guide to the investigator on the expected progress of a matter.

13. The action codes establish in part a scheme for communications with a complainant during an investigation.

14. The investigatory process as currently designed, together with the changes proposed in the regulatory departments redesign through Project 200, discussed below, is intended to facilitate a workable and responsive relationship with complainants by:

a. addressing issues verbally with complainants on a variety of subject at the intake stage, and maintaining accessibility for and responsiveness to complainants (including acceptance of collect calls in specified circumstances);
b. providing appropriate information about and assistance to complainants in the process (ie. The Complaints Helpform, Complaints Process Information Sheet);
c. promptly acknowledging referral of complaint matters to the Society;
d. involving complainants in information gathering beyond initial letters of complaint;
e. willingly meeting with complainants as necessary to enhance the information received or to clarify the complainant's or the Society's position on issues;
f. utilizing a system which encourages regular and timely status reports to complainants on the progress of investigations;
g. informing complainants of their options, when appropriate, when an investigation is completed and the decision is made to take no further action (ie. complaints review);
h. with respect to complaints review, providing adequate follow up after a matter has been heard by the Commissioner and decisions made;
i. ensuring that complaints about investigations are referred to the appropriate party in Complaints or the Secretariat, as the case may be, in a timely way.

15. Beyond the Complaints process, there are other ways in which the Society assists members of the public who may become complainants, including:

a. advice on the Society's website on complaining about a lawyer (the Helpform mentioned above can also be downloaded from the website);
b. inclusion of the Rules of Professional Conduct on the website;
c. a brochure on the complaints process and how to make a complaint;
d. a Dial-a-Law tape on how to complain about a lawyer.

<u>New Initiatives in Complaints Investigations - Project 200</u>

16. Some of the project objectives and critical success factors of Project 200 for the regulatory redesign are effectively expressions of a high-level protocol for the Society's dealings with its "customers", of whom complainants are one group.

17. The critical success factors establish what the redesign must achieve, and include:

a. timely disposition of cases
b. timely response to inquiries
c. access to bilingual services
d. consolidation of intake and investigation functions
e. consistently applied processes.

18. Within the redesign, performance management and measurement for staff are highlighted. Factors to be considered will include:

a. "cycle" time (a reduction in cycle time for completion of tasks should translate to a more satisfied "customer" (including the public));
b. response time to inquiries (the same principle applies);
c. use of alternative resolution mechanisms (an example is ADR, which among other things will increase the ability of the process to be responsive to the specific issues arising in each case and provide the "customer" with more options);
d. external awareness of the process and increasing the public knowledge about the Society, which should facilitate a closer relationship between deliverable results and customer expectations, and increase customer satisfaction;
e. facilitating the ability of customers to communicate with the Society in the language of their choice.

19. Part of the implementation of the redesign of the regulatory departments will involve establishing new or revised structures for investigations, including timelines and measures.

The Audit and Investigations Department

20. Because only matters requiring investigation are referred to Audit from the Complaints Department, the complainant's involvement in Audit's processes is largely confined to that of witness, although as in the Complaints Department's processes, the complainant may also assist the audit investigators with information gathering, depending on the type of case.

21. Where matters have been referred to Audit from Complaints, the Complaints' investigator usually communicates with the complainant on the status of the ongoing investigation.

22. A complainant is interviewed directly by the auditor or examiner on the file. A willsay statement is taken and the complainant is advised he or she may be required to serve as a witness. Complainants receive follow up information through the prosecution process.

23. It is a "participative" process given the nature of the issues under investigation. The issues often prompt the complainant to retain counsel, with whom the department may also communicate.

24. The initiatives which apply to investigations flowing from Project 200 apply to Audit (and Discipline) as they do to Complaints, given that the scope of Project 200 includes all regulatory departments.

APPENDIX 3

THE DISCIPLINE DEPARTMENT

1. A policy was instituted in 1992 with respect to permitting victim impact statements from affected parties to be introduced at hearing. The policy is more fully described in the attached material, which also includes a background memorandum prepared by then Senior Discipline Counsel Gavin MacKenzie for the Discipline Policy Committee which initially reviewed the issue.

2. Other than the above policy, practice in the Discipline Department as it relates to involving complainants is usually dictated by:

   - the nature of the case and evidentiary issues which may require more or less extensive involvement of the complainant in the process; and
   - the interest of the complainant in the prosecution.

3. Where a complainant is interested, the Society's discipline counsel keep the complainant apprised of the status of the prosecution, advise the complainant of the date of the hearing and his or her right to attend, and subject to *in camera* proceedings, advise the complainant that discipline counsel is available to answer questions or discuss concerns.

4. In some circumstances, a complainant may be invited to provide comments on all or part of a draft agreed statement of facts. This would typically be done where discipline counsel needs to ensure that the agreed statement of facts correctly reflects the facts advanced by the complainant and/or the solicitor has advanced variations to the agreed statement of facts which need to be canvassed with the complainant.

5. Discipline counsel retain the discretion to determine the content of the agreed statement of facts acceptable to the Society.

6. In at least one complaint, the complainant's counsel attended the pre-hearing conference.

7. Complainants are not typically invited to participate in the decision as to what the appropriate submission on penalty should be. A complainant interested in the process would typically be told of the existence and content of any joint submission.

8. Where there is no joint submission, counsel typically discuss the range of penalty which the Society might request with an interested complainant.

9. Complainants are advised of the final disposition of the complaint, either by the Complaints Department or the Discipline Department, depending on which department has had substantial contact with the individual.

10. Reference was made in this study to the Crown Policy Manual respecting provisions on victims of crime, attached hereto, which was of assistance in drafting the protocol.

APPENDIX 4

LEGISLATIVE REFORMS

1. The following are new statutory provisions, some of which currently operate by way of policy, contained in the proposed amendments to the *Law Society Act* which bear directly on complainants in the process:

   a. as a disciplinary sanction, a lawyer may be ordered to refund fees and disbursements to a client (s. 38.14(1)(h))[16];
   b. where terms or conditions on the lawyer found guilty of misconduct are ordered, the lawyer may be ordered to give notice of the terms or conditions to the "clients affected by the conduct giving rise to the order" (s. 38.15(3)(h)(iii));
   c. a reprimand and the new penalty of an admonishment are to be administered in public, unless issued in writing (s. 38.21(6));
   d. the reasons and order of a discipline hearing panel are a matter of public record, except for *in camera* proceedings, which are rare (s. 38.22(1));[17]
   e. where the hearing of an incapacity order has been open to the public[18], the decision, reasons and order of the panel are a matter of public record (s. 39.19(2))[19] ;
   f. deficiencies in a lawyer's attention to the interests of clients or deficiencies significantly impairing the quality of service to clients are grounds for a professional competence order (s. 40).

2. The last-described item is intended to address situations where a member fails to meet standards of professional competence.

3. The new office of Complaints Resolution Commissioner (CRC), which is differentiated from the current role of lay benchers as Complaints Review Commissioners, will have responsibility for reviewing a matter, based on the conduct (as opposed to capacity or professional competence) of a member or student member, for resolution, and is authorized to investigate complaints for that purpose on referral from the Secretary or outside counsel.[20]

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[16]A similar provision applies to student members.

[17]The reasons and order have generally been a matter of public record since 1986.

[18]Incapacity and professional competence hearings, and appeals therefrom, are not open to the public, although a party to the hearing may request that it be held in public, subject to the hearing or appeal panel's approval.

[19]A similar provision exists for professional competence orders.

[20]Notes to the legislative amendments in this respect state that "this subsection limits the resolution jurisdiction of the Commissioner to complaints which concern conduct. The jurisdiction does not extend to complaints concerning capacity or professional competence".

4. The CRC will have authority to refer matters to the Proceedings Authorization Committee if action recommended by the CRC on the part of the member or student member is not taken.[21]

5. Similar to the current role of Complaints Review Commissioners, the CRC will be authorized to review conduct investigations at the request of a complainant and refer the matter, if warranted, to the Proceedings Authorization Committee.

APPENDIX 5
VICTIMS' BILL OF RIGHTS

APPENDIX 6

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

APPENDIX 7

PROPOSED PRIVATE PRACTITIONER'S REPORT
AND
EXPLANATORY INFORMATION

APPENDIX 8

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

EXTRACTS FROM THE *LAW SOCIETY ACT*

RULES

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

....

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

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[21]The referral for these purposes is "in respect of the subject matter of the original complaint" where the Commissioner is satisfied that reasonable and probable grounds exist for believing that "the member has committed an offence under section 38" (the disciplinary offences of professional misconduct or conduct unbecoming a barrister and solicitor).

EXTRACTS FROM REGULATION 708

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

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

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

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

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

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

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

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

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

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

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

EXTRACTS FROM THE RULES

PROCEDURES AS TO RULES

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

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

....

FORMS

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

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

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

(2.2) The certificate required to be filed with the Society by a member under subsection 16(2) of the said Regulation 708 shall be included in the Private Practitioner Form which is appended to these rules.

(3) The report of a public accountant that is required to be filed with the Society by a member under subsection 16(2) of the said Regulation 708 shall be the Public Accountant's Report to Lawyer which is appended to these rules.

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

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

Item: Proposed Draft Protocol

Mr. MacKenzie outlined the proposed draft protocol set out in the Report governing the Society's interaction with and involvement of complainants.

Mr. Wardlaw suggested that paragraph 61.(1.) under the heading C. Proposed Draft Protocol be changed by replacing the first "or" in the second line with a comma and the second "or" with the words "and by" so that the paragraph would then read:

> "A Complainant should at all times be treated professionally and with courtesy, respect and candour by Law Society staff, outside investigators and by counsel engaged by the Society with respect to the Complainant's matter."

The Chair accepted this change.

It was moved by Mr. Topp, seconded by Ms. Sealy that the words "language of their choice" be added to subparagraph 4. under the heading Generally, of the Proposed Draft Protocol so that it would then read:

> "The Society should make every effort to communicate with a Complainant, if the Complainant so requests, in French or the language of their choice."

Carried

It was moved by Mr. Wilson, seconded by Mr. Crowe that the Society must respond in French if requested.

Carried

The Draft Protocol proposal as amended was adopted unanimously.

Item: Pro Bono Duty Counsel

Ms. Sachs presented the item in the Report dealing with pro bono Duty Counsel.

It was moved by Ms. Sachs, seconded by Ms. Cronk that the Advocates' Society's proposal to administer a program in providing pro bono duty counsel on Law Society discipline hearing days to assist unrepresented solicitors be adopted.

Carried

The items regarding the prescription of a new form, the Private Practitioner's Report and the Proposed Policy on Provision of Complaints Review Throughout Ontario were deferred.

Convocation took a brief recess at 10:15 a.m. and resumed at 10:30 a.m.

Report of the Finance and Audit Committee (1998 Budget)

Mr. Krishna presented for Convocation's approval the 1998 Budget for the Law Society of Upper Canada.

Finance and Audit Committee
November 13, 1997

Report to Convocation

Purpose of Report: Decision Making

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee (`the Committee") met on November 13, 1997. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. DelZotto, D. Lamont, D. Murphy, C. Ruby, G. Swaye, T. Stomp, J. Wardlaw, R. Wilson and B. Wright. Staff members in attendance were J. Saso, W. Tysall, D. Carey, and K. Corrick.

1. The Committee has two matters that require Convocation's approval:

   - the 1998 Budget for the Law Society of Upper Canada - General Fund and Lawyers Fund for Client Compensation

   - a policy that all new projects and proposals having a financial impact on the Society's operations are to be reviewed by the Finance and Audit Committee before proceeding to Convocation for approval.

2. This report contains:

   - the Law Society of Upper Canada - General Fund and Lawyers Fund for Client Compensation draft 1998 Budget (under separate cover entitled The Law Society of Upper Canada - 1998 Budget)

3. After much discussion and debate the Committee arrived at a preferred budget that addresses the many issues that have arisen over the past year and are expected to continue in 1998. The budget was prepared on a "break-even" basis with the following objectives:

   - provide funding to allow compliance with Executive Limitations (1998 Budget page i)

   - provide funding for changes to the Society's operations and technology that will arose from on-going restructuring efforts (1998 Budget page v)

   - provide funding to set up a building fund that is sufficient to ensure the Society's physical assets will not be subjected to improper wear and tear and allow for sufficient maintenance to ensure the historical integrity of the building is not impaired

   - provide funding for the establishment of a Government Relations Committee along with staff resources (1998 Budget page v)

- provide funding for the "Bicentennial report and Recommendations on Equity Issues in the Legal Profession" which was approved at Convocation in May of 1997 (1998 Budget page v)

- provide funding for the Lawyers Fund for Client Compensation to halt the erosion of capital within the Fund (1998 Budget page vii)

- provide funding for the Lawyers Fund for Client Compensation audit programmes that will be required under the new "Self-Reporting Model" (1998 Budget page vii)

- provide funding for a Technology and Research Infrastructure Fund for updating and upgrading technology, building and other significant issues that arise from time to time (1998 Budget page v)

4. The 1998 budget includes the closing of the Search Law operation (1998 Budget page iv, 26) and changing Dial-a-law to internet access only from a 1-800 free telephone service (1998 Budget page iv, 22).

5. A discount of $50 is being offered to full fee paying members that remit payment in full on or before January 31st. This does not represent the 4% that was approved at Convocation in October 1997. It was determined that a percentage discount is not representative of the amount of time and money saved through early payment and that a flat fee, according to fee paying status, would be more representative.

6. A request has been made to provide funds for the portraits of two Chief Justices in the 1998 budget. The amount totals $50,000. Convocation in 1993 approved the changing of the policy to provide portraits only for the Treasurer. Presently, this item has been excluded from the 1998 budget as a policy change will be required to amend Convocation's decision of 1993.

7. The County and District Law Presidents' Association has requested funding of $36,000 in 1998 to cover the cost of additional travel required in their merger discussion with the Canadian Bar Association - Ontario and the Metro Toronto Lawyers Association. This amount has not been included in the budget.

8. A schedule that details the year over year changes to the Committee's Preferred 1998 Budget" as well as Option A that changes various components of the budget is included on page 1 of the 1998 document.

9. The Finance and Audit Committee recommends to Convocation that the 1998 Budget be approved setting the 1998 Annual Membership Fee at $1,747 per member, as presented in the 1998 Budget document.

10. During the budget deliberations, the Committee encountered projects and programs that had been approved by Convocation without the benefit of a financial impact statement. It is imperative that Convocation be fully informed of any proposed projects and programs, including the cost to the Society and its members. The Finance and Audit Committee should review the financial impact of the proposals.

11. The Finance and Audit Committee recommends to Convocation that, in the normal course of business, all new projects and programs having a financial impact on the Society's operations are to be reviewed by the Finance and Audit Committee before proceeding to Convocation for approval. Only under exceptional circumstances should they proceed directly to Convocation along with full financial justification. The projects and programs submitted to the Finance and Audit Committee are to include a fully detailed "financial impact statement."

Finance and Audit Committee
November 13, 1997

Report to Convocation

Purpose of Report: Information

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on November 13, 1997. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. DelZotto, D. Lamont, D. Murphy, C. Ruby, G. Swaye, T. Stomp, J. Wardlaw, R. Wilson and B. Wright. Staff members in attendance were J. Saso, W. Tysall, D. Carey, and K. Corrick. Others in attendance were D. Porter (Legal Aid).

1. The Committee is reporting on the following matters:

- Law Society of Upper Canada - General Fund highlights and unaudited financial statements for the nine months ended September 30, 1997
- Law Society of Upper Canada - Lawyers Fund for Client Compensation highlights and unaudited financial statements for the nine months ended September 30, 1997
- the Ontario Legal Aid Plan unaudited financial statements for the six months ended September 30, 1997
- the investment report for the General Fund and the Lawyers Fund for Client Compensation for the nine months ended September 30, 1997.

- after reviewing the audit fees for the past two years, the Committee instructed the Chief Executive Officer to seek proposals for audit services for the year ended December 31, 1997

2. This report contains:

the Law Society of Upper Canada - General Fund unaudited financial statements for the nine months ended September 30, 1997 (pages 10 - 18),

- the Law Society of Upper Canada - Lawyers Fund for Client Compensation unaudited financial statements for the nine months ended September 30, 1997 (pages 19 - 22).
- the Ontario Legal Aid Plan unaudited financial statements for the six months ended September 30, 1997 (pages 23 - 33)
- the investment report for the General Fund and the Lawyers Fund for Client Compensation for the nine months ended September 30, 1997 (pages 34 - 44).

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

(1) Copy of Memorandum from Ms. Wendy Tysall, Chief Financial Officer to the Chair and Members of the Finance and Audit Committee dated November 3, 1997 re: General Fund: Financial Highlights for the Nine Months Ended September 30, 1997. (pages 10 - 17)

(2) Copy of Memorandum from Ms. Wendy Tysall, Chief Financial Officer to the Chair and Members of the Finance and Audit Committee dated November 3, 1997 re: Lawyers Fund for Client Compensation Financial Highlights for the Six Months Ended September 30, 1997. (pages 18 - 21)

(3) The Ontario Legal Aid Plan Financial Reports for the 6 month period ending September 30, 1997. (pages 22 - 32)

(4) Third Quarter Investment Report for the nine months ended September 30, 1997. (pages 33 - 43)

Report of the Lawyers Fund for Client Compensation Committee

Meeting of September 4th, 1997

Mr. Ruby presented the Report of the Lawyers Fund for Client Compensation Committee dealing with the budget.

The Lawyers Fund for Client Compensation Committee
September 4, 1997

Report to Convocation

Purpose of Report: Decision Making

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EXECUTIVE SUMMARY

1. The Committee is recommending that the 1998 levy for the Lawyers Fund for Client Compensation be set at $245 for full fee paying members. The Committee has undertaken an extensive review of the financial health of the Fund. While the levy has been as high as $300, it has been set at the nominal rate of $1 per year since 1990 due to a surplus of money in the Fund. An actuarial review of the Fund has been undertaken and the conclusion reached that it is no longer possible to charge an artificially low levy and maintain the long term viability of the Fund. However, the Committee is of the opinion that such a levy is only justifiable if proactive measures are taken to reduce the level of future claims.

2. At its meeting of October 27th 1997 Convocation adopted the `Self Reporting Model' of annual financial reporting to the Law Society by the private practitioner. This model acknowledges that the vast majority of members are honest and maintain their books and records in accordance with Law Society regulations. Under the Self Reporting Model the role of the public accountant has been made optional. Instead, members are able to make the necessary filings themselves. This will annually save the average practitioner hundreds of dollars. To ensure on-going compliance with the Regulations concerning the maintenance of books and records, random and focused audit teams will be formed. The Committee is recommending that the annual fee lawyers pay to the Law Society be increased $75 in order to cover the costs of the audit teams.

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Lawyers Fund for Client Compensation Committee ("the Committee") met on September 4, 1997. In attendance were:

Harvey Strosberg (Treasurer)
Clayton Ruby (Chair)
Bob Aaron
Nancy Backhouse
Ronald Cass
Paul Copeland
Gordon Farquharson
Gary Lloyd Gottlieb
Hope Sealy
Stuart Thom
Robert Topp
Richmond Wilson

Staff: Craig Allen, Duncan Gosnell, Malcolm Heins, David McKillop, Richard Tinsley and Jim Yakimovich

2. This report contains:

- a report on the Committee's continuing work concerning the assessment of the financial status of the Lawyers Fund for Client Compensation including a recommendation for the 1998 Fund levy;

- a report on the `Self Reporting Model' of annual financial reporting made by a member in private practice to the Law Society [adopted by Convocation October 27th 1997] including a recommendation for an increase in the annual fee in order to cover the costs of random and focused audit teams.

A. REPORT ON THE FINANCIAL STATUS OF THE COMPENSATION FUND AND 1998 LEVY RECOMMENDATION

Assessment of the Financial Status of the Fund

3. As at June 30, 1997, the Fund had outstanding gross claims of $35.4 million. The maximum grant available to claimants, as established by Convocation, is $100,000. Once this limit is applied to the gross claims inventory, the maximum potential pay out falls to $15.9 million.

4. The current balance of the Fund is just below $22 million. If the Fund were to pay each claim on file up to the appropriate limit (for a total cost of $15.9 million), the remaining balance would be approximately $6.1 million. This is the Fund's uncommitted cash balance.

5. In order for the Fund to be left with a balance of only $6.1 million, it would have to pay in full each and every claim on file up to the appropriate limit. This is not a realistic scenario in view of the fact that many claims are denied as being wholly without merit, do not fall within Convocation's guidelines for payment or are paid at less than the amount claimed even with limits applied. While an uncommitted cash balance of $6.1 million is a "worst case scenario", it is a severe decline from the situation that existed at the beginning of the year.

6. As at December 31, 1996, the balance of the Fund was $24 million (more than $2 million higher than at present). Gross claims were $26.9 million. Claims, once limits were applied, were $12.2 million. The uncommitted cash balance was approximately $12 million; $6 million higher than it is at present.

Claim Payments on the Rise

7. In addition to the balance of the Fund decreasing, claim payments are increasing. In 1996 the Fund paid grants totalling $3.3 million. In the first seven months of 1997 that figure had already been equalled. By the end of 1997, it is expected grant payments will total between $5.5 and $6 million.

8. The increase in claims as well as grant payments is not necessarily indicative of an unfavourable trend. The majority of the increase in new claims is attributed to two lawyers. The conduct of both lawyers relates to mortgage investment activity in the latter 1980's and early 1990's. One lawyer was able to conceal his activities until very recently. The conduct of the remaining lawyer has been known for several years but the claimants have been exhausting potential remedies against other sources (including LPIC) before pursuing claims to the Fund.

Investment Income Declining

9. The annual levy paid by most members of the Law Society to maintain the Fund has been $1 since 1991. The nominal levy has been made possible by the large balance in the Fund and the investment income being earned. However, the declining balance of the Fund and a prolonged period of relatively low interest rates have had a dramatic impact on the Fund's investment income.

10. In 1997 it is expected the Fund will earn $1.9 million in investment income. Between 1991 and 1994 annual income ranged from $2.4 to $3.7 million.

11. The Fund's annual administrative expenses are $1.6 million. With annual investment income figures exceeding this amount, the reduction in the Fund's balance has been less dramatic.

12. In 1998 it is estimated investment income will total $1.1 million. As a result, administrative expenses are no longer being covered by investment income and there will be further erosion of capital.

Effect on the Balance of the Fund

13. By the end of 1997 the balance of the Fund will fall below $20 million for the first time in well over a decade. By the end of 1998 the balance will fall below $15 million which is less than the maximum potential pay out and results in a negative uncommitted cash balance. The Fund has not had a negative uncommitted cash balance since June 30, 1985 when claims with limits applied were $13.2 million and the balance of the Fund was $10.5 million

14. While future claims and the resulting claim payments are difficult to predict, should current levels continue (grant payments of approximately $5 million per year) and the levy remain at $1 per year, the balance of the Fund would be exhausted at some point during 2001.

The Annual Levy

15. Unlike LPIC, the Fund is financed by the membership as a whole through the payment of an annual levy. The levy is paid by both practising and non-practising members.

16. At present, members who due to illness, economic circumstances or other reasons, cease practising or become unemployed, or are taking parental leave, pay 25% of the full annual fee in order to maintain their memberships in the Society. These members have been paying 25¢ towards the operation of the Fund.

17. Members not engaged in legal practice in respect of the law of Ontario, including those employed in education, government, corporations or any other position who do not provide legal advice, opinions or services, pay 50% of the full annual fee.

18. Due to the fact that claims for intentional acts are generally brought under the LPIC policy if the culpable lawyer practised in partnership or association with others, the vast majority of lawyers who have claims brought against them at the Fund are sole practitioners.

19. The 343 claims currently open with the Fund relate to 67 members and former members of the Law Society. Of those 67 members, all but 5 were sole practitioners at the time the alleged dishonest conduct occurred. However, it should be noted that dishonesty among sole practitioners is not a widespread problem. There are over 6,000 sole practitioners in Ontario and therefore only 1% present any type of concern for the Fund.

20. Of the 62 sole practitioners against whom claims have been filed, 3 are responsible for 55% of all 343 open claims with the Fund. 54 of the sole practitioners have 5 or fewer claims against them.

21. From a `risk assessment' perspective, arguably sole practitioners should bear a greater proportion of the cost of the operation of the Fund. This argument is only valid if the Fund is viewed as a form of insurance, which it is not. The Fund is a trust operated by the Law Society to assist clients who have suffered a financial loss due to a lawyer's dishonesty. The operation of the Fund is a statement to the public at large that the profession is concerned about lawyer dishonesty and as a self-governing profession, is willing to financially assist those clients who are victims of lawyer malfeasance.

22. When lawyers commit dishonest acts that lead to financial losses for clients, the reputation of the entire profession suffers. The operation of the Fund is a vehicle whereby all lawyers, be they sole practitioners, partners, associates, employees - practising law or otherwise; can stand behind their profession and declare their intent to help right a wrong.

23. The Lawyers Fund for Client Compensation Committee recommends that all members of the Law Society, notwithstanding their status, continue to contribute to the operation of the Fund through payment of an annual levy.

Proposal for Increased Annual Levy

24. Historically, the Fund levy has varied annually between $1 (the current levy) and $300 (the 1982 levy). The following chart lists all annual levies dating back to 1973 together with a sampling of levies from 1972 back to 1954 when the Fund was formed.

Lawyers Fund for Client Compensation Annual Levy (in dollars), 1954-1997

Year	Levy
1954	$ 10
1957	10
1959	20
1960	45
1964	100
1968	30
1971	30
1973	30
1974	20
1975	20
1976	30
1977	50
1978	30
1979	50
1980	90
1981	100
1982	300
1983	275
1984	275
1985	275

1986	250
1987	225
1988	245
1989	50
1990	25
1991	1
1992	1
1993	1
1994	1
1995	1
1996	1
1997	1

25. It is noted from the above table that between 1982 and 1988, Society members were assessed amounts between $225 and $300 annually in order to provide for grants and expenses paid by the Fund.

26. An accounting and actuarial analysis of the Fund's current file inventory reveals that the unpaid claims liability, as at June 30, 1997, is $10.3 million. This amount encompasses grants expected to be paid on claims for which the Fund received notification prior to June 30, 1997. It also includes a provision for future administrative expenses. In other words, it is expected that it will cost $10.3 million to completely eliminate the June 30 file inventory which , with limits applied, totals $15.9 million; pay claims that will eventually come in but for which notice of a potential claim had been received by June 30, 1997 and pay the necessary administrative expenses to undertake this task.

27. Further analysis by the actuary of the unpaid claims liability, the investment income of the Fund and its administrative expenses reveals that a substantial increase in the levy for 1998 is required to ensure the long term financial viability of the Fund. The actuary has recommended that the 1998 Compensation Fund levy be set at $245 with adjustment for members who do not pay the full Law Society fee.

28. The actuarial analysis was prepared by Craig Allen, Vice President of Actuarial Services for LPIC. Mr. Allen attended the meeting of the Committee to explain how he arrived at his recommendation. It should be noted that Mr. Allen's analysis has been reviewed by the Law Society's external auditors and they are in agreement with his conclusions. Mr. Allen's report is at Tab 1.

The Committee's View

29. Mr. Allen's actuarial analysis is the first time a levy recommendation has been made using anything other than educated guesswork. This analysis predicts that claims and grant payments will continue to rise in future and a levy of $245 is required to meet those needs. Charging a levy of less than $245 may be a sound alternative if the future level of claims decline. The evidence currently available does not support such a conclusion.

30. The Committee is of the opinion that the underlying decision to be made is whether to be conservative and adopt the actuarial analysis that predicts claims will continue to rise or take a more aggressive stance and hope levels fall.

31. The Committee also examined the issue of placing a cap on payments from the Fund as a potential means to assist in the prevention of further capital erosion from the Fund. At present, there is no per lawyer cap in place which would limit payments to clients of any one dishonest lawyer. There is, however, a per claimant limit of $100,000. No single client is entitled to a grant of more than $100,000.

32. As of January 1st 1988 the Fund eliminated a $1,000,000 per lawyer limit. The primary reason for eliminating the limit was delay in paying claims to victims. Having a limit in large dollar cases necessitated waiting until all the claims had arrived, determining the appropriate level of grant and then paying the victim a pro rata share of the available limit.

33. The delays lead to hardship for victims in many cases; upset and resentment on the part of the victims and adverse publicity for the Fund and the Law Society. Eliminating the limit resolved most of these problems.

34. The Committee reaffirms its long standing policy of not having a per lawyer cap in order to prevent artificial delay to victims of lawyer dishonesty. The Committee believes the $100,000 per claimant limit is sufficient to protect the Fund from large, unexpected losses.

35. The Committee accepted the actuarial evidence and is proposing the 1998 Compensation Fund levy be set at $245. Faced with this number, and the prospect of its continuation, the Committee is concerned that the future should not resemble the past. It feels it cannot recommend this levy and at the same time fail to recommend steps that will ensure that future dishonesty by lawyers is not more effectively controlled and more effectively prevented.

36. Failure to act would be unacceptable to the profession and unacceptable to the public. Accordingly, the Committee examined alternate models for the prevention of dishonesty by those few members of the profession who disgrace us all.

B. REPORT ON THE `SELF REPORTING MODEL' OF ANNUAL FINANCIAL REPORTING TO THE LAW SOCIETY BY THE PRIVATE PRACTITIONER

NATURE OF THE ISSUE

37. In its September 1997 report to Convocation, the Lawyers Fund for Client Compensation Committee proposed four alternative methods for annual financial reporting to the Law Society by the private practitioner. Briefly, the four proposals were as follows:

Proposal A: The Full Audit Standard: A public accountant engagement which requires the accountant to perform a complete audit to enable the accountant to express a professional opinion as to the completeness of the records and the accuracy of the financial information reflected therein.

Proposal B: An Enhanced Specified Procedures Review Engagement: This model is a modification of the current specified review engagement and would require the accountant to conduct additional specific review procedures additional to those currently done respecting the law firm's accounting records. The review procedures are those reflected on the Public Accountant's Report to Lawyer form. To enhance the role of the public accountant, the questions on the form would be increased to direct the accountant to perform a more detailed review of the accounting records.

Proposal C: Current Model of Accountant Review and Form Filing Augmented by an Audit Team: This model is a modification to the current specified procedures review engagement. The accountant's role would remain unchanged and the current Public Accountants Report to Lawyer form will continue to be used. To provide an investigative focus on matters which give rise to Lawyers Fund For Client Compensation claims, auditors would be hired and given a focused mandate to auditing law firms which display characteristics common to Compensation Fund claims.

Proposal D: Self Reporting Model: This model would not require a law firm to retain a public accountant to review its records and complete a reporting form to the Law Society. The lawyer and record keeping staff of the law firm would complete a Law Society form modified to accommodate this model. To ensure that this model does not reduce compliance with record keeping standards, teams of auditors would be hired and dedicated to compliance enforcement through continuous, targeted, and visible auditing programmes.

38. On October 27th 1997 Convocation adopted Proposal D which would introduce the Self Reporting Model of annual financial reporting.

39. At a special meeting held on November 13th 1997, Convocation adopted an amendment to section 16 of Regulation 708 made pursuant to the Law Society Act. The current regulation requires every member who engages in the private practise of law in Ontario to file with the Society, within six months of the termination of the member's fiscal year end, a report completed by a public accountant.

40. The amendment passed by Convocation would permit members and their record keeping staff to complete a revised Private Practitioner's Form making the retention of a public accountant optional.

BACKGROUND

Statistics for Consideration

41. In 1996 the Law Society introduced new annual reporting forms. The certificate formerly known as Form 2 became the Private Practitioner Form and Form 3, the report completed by the public accountant, became the Public Accountant's Report to Lawyer. These new forms provided much more comprehensive information to the Law Society concerning members' practices and their handling of client funds.

42. Select statistics compiled from the new model of forms indicate that:

- Lawyers in private practice hold a total of $2 Billion in trust money at the most recent year end of law firms. Of this $2 Billion, about $450 Million is held by sole practitioners.

- Of the $2 Billion, $½ Billion is held in mixed trust accounts and $157 Million is held in estate accounts.

- 35 lawyers each report acting on between 26 - 75 private mortgage investments for clients in 1996.

- 22 lawyers each report acting on 75 or more private mortgage investments for clients in 1996.

43. These statistics indicate the amount of trust money held by the profession and the extent of mortgage investment activity made through the profession in 1996. It is respectfully suggested that to ensure adequate protection of the public, an alternative compliance model be considered.

Self Reporting Model

Overview of the Self Reporting Model

44. This model introduces significant proactive measures which may reduce operating expenses for a law firm, will reduce prosecutions for non filing of forms, will reduce the number of forms filed by the member, and will introduce a programme of visible and meaningful Law Society presence at law firms through the creation of audit teams dedicated to compliance efforts. The continued requirement to report trust account details to the Law Society, coupled with the benefits associated with audit teams, will ensure that the public's interest is well protected.

45. The new model includes the elimination of the existing Public Accountant's Report to Lawyer form, and by extension, the elimination of the mandatory annual accountant engagement with respect to the review of the lawyer's accounting records. The result of this initiative will be that compliance reporting of law firm accounting records will be made solely by the practising lawyer, with or without the assistance of employed accounting staff, or, at the option of the member, with the assistance of a professional accountant.

Member Self Reporting Model

46. This model permits the Law Society to adopt a member annual reporting system which eliminates the requirement that a public accountant be engaged to report to the Law Society on the law firm's accounting practices. A lawyer in private practice will likely continue to engage a professional accountant for annual financial and taxation reporting requirements, and may elect to retain a professional accountant to assist the member with the financial component of the member's annual filing report.

47. A lawyer that elects to continue to retain an accountant to perform a periodic overview assessment of the trust accounting practices of the law firm, as opposed to retention for the purposes of completing the form, will likely pay an accountant's fee which is less than that currently paid given the reduced role of the accountant.

48. This model permits the member to file a consolidated annual practice report, which incorporates reporting on accounting matters, through use of the Private Practitioner Form modified for this purpose. This consolidated report will allow Convocation to eliminate the Public Accountant's Report to Lawyer form. A draft of the revised Private Practitioner's Report is found at Tab 2.

49. To maintain public confidence in the Law Society's governance of lawyers' trust accounting compliance, auditors will be hired/retained to perform audits to ensure trust accounting record keeping compliance standards continue to be met and to service the profession by providing on site advice and continuous education in this regard.

50. Compliance or spot audits are an accepted part of every profession. Section 8 of the *Canadian Charter of Rights and Freedoms*, while providing protection from unreasonable search or seizure permits entry, by those charged with the duty of enforcing regulations, without reasonable grounds where the purpose is regulatory in nature, e.g health and safety, and not pursuant to a criminal investigation.

51. The audit programme will also have a focus on matters which give rise to Compensation Fund claims. These matters include extremely poor trust accounting records, acting for private lenders in mortgage investments where the security is questionable and the lawyer acts for a multitude of parties, shortages in the trust bank account, etc.

52. An amendment to the Bar Admission Course is required to include a module specific to lawyer annual reporting obligations under this model so that future members will be familiar with their obligations under this model.

53. Under this model, there will be a change in the filing period for the forms to require that members complete and file the financial report within 90 days from the end of the practice fiscal year end. This reduced filing period will enable the Society to respond to reported problems, or purposeful non filers, more readily than would be the case with the current 180 day filing period. Because the lawyer is no longer obliged to defer to the public accountant's busy schedule, it is expected that this reduced filing delay will not be overly onerous on the profession.

Advantages of the Self Reporting Model

- This model provides an effective alternative reporting method regarding law firm accounting practices.

- Provides a model which will permit the Society to consolidate the existing Private Practitioner and Public Accountant's Report to Lawyer forms into one single annual reporting form. (Tab 2)

- Provides the member with the *option* of engaging any qualified professional accountant to assist in the completion of the portion of the proposed consolidated form which pertains to the law firm's accounting system reporting requirement.

  The member in private practice will have the ability to report on the financial matters either by personally performing all the accounting system reviews, by using the assistance of the law firm's bookkeeping or accounting department staff to assist him/her in making the review and reporting, or by retaining a professional accountant for that purpose.

  As the retention of the licenced public accountant will be optional to the lawyer in private practice, the costs associated with the current mandatory annual engagement may be eliminated for those firms that elect to not retain an accountant to assist in the financial reporting under this model.

- As with the current model, the continuing requirement to report on financial matters will compel law firms to ensure that record keeping and trust accounting practices are in compliance with the Regulation.

- The public protection measures associated with annual law firm accounting reporting to the Law Society will continue to exist under this model.

- The model proposes an amendment to the Regulation which includes a provision which will give the Secretary or the Chair or Vice-Chair of the Discipline Committee the discretion to require the member to retain a public accountant for purposes of an audit and report to the Law Society where circumstances warrant. [The Regulation, which was passed by Convocation on November 13th 1997, appears at Tab 3]

- The creation of Law Society audit teams will bring a visible and meaningful Law Society presence at law firms. This measure will have the additional effect of reducing compliance issues through education and remedial activities where record keeping standards are not maintained so that the member does not continue with practices which may result in the misuse of trust money.

  It is envisaged that the educational component will be comprised of on-site tutoring where the audit has detected record keeping inadequacies. It will also include the development of Website and Law Society Gazette materials to provide the profession with comprehensive guidance, interpretation and general information about record keeping requirements and practices.

- Provides an institutional response and relief to those practitioners who can ill afford the current public accountant engagement forms reporting model.

- Information gathered about law firm trust accounting systems, through the 1996 Public Accountant's Report to Lawyer form, has created a database of member record keeping practices to serve as a foundation from which to launch this initiative. This information will be used to assist lawyers in the Self Reporting Model. The Law Society will facilitate the completion of the reporting form by pre-completing portions of the form for each lawyer to reflect information already known to the Law Society and will ask the lawyer to confirm if the information remains correct.

Disadvantages of the Self Reporting Model

- This model is without precedent in Canada or the United States, therefore, it may properly be viewed with skepticism. (Most States do not have a financial reporting requirement or an audit programme. All provinces have a reporting model similar to that of Ontario's current model.)

- This model requires an amendment to the Regulation although there is every indication at the present time that the Regulation will be passed by Cabinet in December of 1997. [Tab 3]

- The Institute of Chartered Accountants of Ontario may voice objection to this model because of the reduction, or elimination in some cases, of their role in the lawyer's obligation to report on law firm record keeping practices.

- Although the practising lawyer will benefit significantly from the reduction in annual operating expenses associated with the existing public accountant engagement, average range of, from a low of $500.00 to $1,000 annually, this benefit will be somewhat offset by the Society's annual fee increase associated with the audits for purposes of ensuring compliance with accounting requirements. In the first year of the programme, it is recommended the annual fee increase $75.

- The proposal results in a permanent increase in Law Society staff (auditors/related staff) for the focused audit programme. It is proposed that the random audit programme will be tendered out to public accounting firms and practitioners.

- The model relies on the premise that practising lawyers will prefer, and possess the skill set, to self report on the law firm's accounting system and its compliance with the Regulation.

  To ensure that lawyers are able to competently complete the financial reporting aspect of the new form, a Law Society education forum will be periodically required. As well, records review completion guide material will be developed and provided to the profession on the Website and in print. The audit visit will also include an education component. Further, the questions on the form will be instructive as to procedure in order to permit accurate self reporting.

Impact On the Discipline Process

54. In 1996, 419 matters were authorized for discipline prosecution, of which 172 pertain to failure to file forms and twenty four (24) pertain to trust account issues, i.e., misappropriation or misapplication.

55. As was the case under the current model of accountant report filing, under the self reporting model on accounting matters, private practitioner non filing will continue. However, it is expected that those lawyers who currently fail to file accountant reports because of the cost associated with the public accountant engagement will, under this model, find themselves in a position to self report without the financial burden associated with the existing filing model.

56. The ability to direct an immediate audit visit on any non filer firm will reduce non filing prosecutions where the cause of the failure to file is a matter of a substantive nature. Although the detection and investigation of the substantive issues may create discipline workload, the use of resources to address matters of a substantive nature are a more effective use of resources than those deployed on non filing prosecution matters.

57. In conclusion, it could be expected that the private practitioner non filer prosecution workload will decrease.

Assessment of Risk to the Public

58. The question arises as to whether the absence of the public accountant engagement will contribute to reduced trust accounting standards and/or an increase in the incidence of trust money misuse. No empirical data exists to provide a statistically reliable answer to this question. To respond to this question, one is asked to consider the following factors:

- The known incidence of trust money misuse is not significant in that only 24 of 419 matters authorized in 1996 pertained to trust money misuse. In 1995, 25 of 569 matters authorized pertained to trust money misuse. This information is instructive in that it supports the notion that misuse of trust money is not a significant proportion of the matters authorized. The current Law Society investigation activity does not support the notion that significant numbers of dishonest lawyers exist.

  To put the numbers in context, the 1996 statistics could be restated to say that for every 1000 members engaged in private practice, only 1.4 members are the subject of prosecution for the misuse of trust money.

- The proposed audit programme will serve not only to ensure a member is in compliance with the regulation, but will also be charged with the responsibility to serve the profession by providing on-site education about trust accounting and record keeping standards and will provide remedial alternatives in place of more traditional compliance enforcement measures.

  Under the current model of accountant report filing, the deterrent and educational components of an effective audit programme do not exist.

- A visible audit programme will deter a member from failing to maintain proper accounting records and will discourage trust money misuse.

- Significant value is derived from the current public accountant engagement where a report of client trust ledger overdrafts or trust bank account overdrafts is made.

  These matters can be detected from the review of the monthly trust comparison, therefore, it is proposed that under this model, the member be required to submit several monthly trust comparisons with the annual form. This measure will provide for a ready detection of overdrawn client ledger accounts or any overdraft in the trust bank account. Substantive issues detected by the review will initiate an immediate visit by auditors. Therefore, this alternative method of reviewing the trust accounts will not reduce the Society's ability to detect trust shortages.

- A practitioner's attempt to avoid detection of trust shortages by purposeful failure to file the form in a timely fashion will be met with the response of an immediate audit under a `failure to file' audit programme strategy.

- Although the current model of accountant review and reporting adds value to the Society's program to protect the public, in itself, the accountant review seldom reports trust money misuse, but rather, it reports on factors which permit the Society to identify those matters which require more intensive investigation.

  The questions in the redesigned self reporting form will continue to require the member to report on the issues which serve as an indicator that further investigation is required.

59. This model will not erode the public protection mandate of the Society because of the enhanced educational programs, the continuing requirement that members file a financial report, and the significant deterrent effect of an aggressive and visible compliance audit team.

Financial Analysis and Impact on the Annual Fee

60. The demographic breakdown of law firms in Ontario is as follows:

Membership Records
Analysis of Firms by Firm Size as at MAY 1997

Firm Size	Number of Firms	% of Total	Cumulative Firm Count	Member Count	% of Total	Cumulative Member Count
	<---- Firm Statistics ---->			<----- Member Statistics ----->		
1	5,081	71.91	5,081	5,081	30.67	5,081
2	932	13.19	6,013	1,864	11.25	6,945
3	352	4.98	6,365	1,056	6.37	8,001
4	205	2.90	6,570	820	4.95	8,821
5	120	1.69	6,690	600	3.62	9,421
6 - 10	222	3.14	6,912	1,610	9.71	11,031
11 - 15	66	.93	6,978	830	5.01	11,861
16 - 20	28	.39	7,006	499	3.01	12,360
21 - 25	11	.15	7,017	251	1.51	12,611
26 - 50	25	.35	7,042	879	5.30	13,490
51 - 10	7	.09	7,049	520	3.13	14,010
101 - 2	11	.15	7,060	1,411	8.51	15,421
201 +	5	.07	7,065	1,144	6.90	16,565

Impact of the Self Reporting Model

- Requires an amendment to the Regulation.
- Includes a regulatory provision which retains the discretion to require a member to retain a public accountant for purposes of a report to the Law Society.
- Convocation must prescribe a "consolidated reporting form" [the new form will be tabled in Convocation on November 28th 1997 for prescription].
- Provides a proactive compliance approach with a view to reducing complaints and claims.
- Eliminates the mandatory nature of the accountant's fees associated with retaining an accountant to complete a form for reporting to the Law Society.
- Creation of audit teams increase operating costs of the Law Society/dues to the profession.
- Provides an effective alternative to members in private practice who can ill afford the costs associated with a public accountant engagement model.
- A neutral impact on compliance because of the audit programme.

Cost Impact to the Profession

61. The average smaller size law firm incurs an annual outside public accountant cost of, from a low of $500.00 to about $1,000, for purposes of the regulatory imposed accountant review. With about 7065 law firms in Ontario, it can be projected that $5 - $7 million in accountant fees and GST is expended annually by law firms in this regard. The self reporting model eliminates the mandatory nature of this annual expenditure. (Based on 16,500 members in private practice, the accountant fees range between $300.00 - $425.00 per lawyer.)

62. The offsetting cost to the profession is the increase in annual fee associated with the creation and existence of a suitably sized audit team.

63. Under the self reporting model, the audit teams will be responsible for ensuring compliance with record keeping requirements and also to focus on matters which give rise to Compensation Fund claims. The focused audit programme resources will be directed toward law firms which display factors which may give rise to claims or who display poor trust record keeping practices. This will assist in reducing claims to the Fund that are both mortgage and non-mortgage related.

64. The lawyers to be targeted for focused audit will include all members in private practice, not just sole practitioners, who meet a "profile" to be developed jointly by the Law Society, the Lawyers Fund for Client Compensation and the Lawyers' Professional Indemnity Company (LPIC). It is expected that the criteria making up the "profile" will include the following factors:

- trust account problems reported on the annual filing report or identified through a review of trust comparisons filed with the financial reports;
- law firm record keeping practices;
- failure to file complete financial reports on a timely basis;
- Complaints Department "profiles" based on extent and nature of complaints;
- LPIC "profiles" based on extent and nature of claims and other factors;
- Compensation Fund "profiles" based on claims characteristics.

65. The following information was compiled from the most current annual filings and provides a preliminary indication of the numbers of members that would fit the profile for some of the criteria listed above:

1) Q 13, Private Practitioner Form, asks "Have you acted for or received money from a lender that is lending money secured by a charge, or charges, on real property?" (Excluding exempt transactions pertaining to Form 4, Schedule A)

1035 positive responses were received to this question.

2) Q 14, Private Practitioner Form, asks members to report on "Have you, whether in the course of or separate from your practice of law, either directly or indirectly through a corporation .....arranged a lending of money, whether on the security of real estate or otherwise?"

172 positive were received to this question.

3) Q 15, Private Practitioner Form, asks members to report on "Number of mortgage advances during the period covered by this filing:"

1057 responded to this question. (These respondents include those who responded to Q 13 and Q 14.)

4) With respect to the Public Accountant's Report to Lawyer forms filed to date with respect to reports on the FIRM'S activity, 554 firms report acting for a lender or arranged for the lending of money on the security of real estate, excluding exempt family, institutional and other exempt transactions.

5) The dollar value of these mortgage transactions reported for the year range from $365 million to in excess of $825 million. Because the reporting is made on the basis of a range of dollar values, the precise amount cannot be provided.

Audit Team Cost and Units of Production Analysis

66. The following alternative size staffing proposals are based on approximately 7000 small sized law firms and 65 medium and large law firms.

67. On direction from the Lawyers Fund For Client Compensation, the audit effort will have a proactive investigative focus and will be directed toward those members within the "risk" profile. In addition, a significant number of random audits will be performed each year.

68. An enhanced scope of audits reduces the number of audit visitations, compared to a model in which the audit visitations are of a more general nature.

69. In addition, the focused nature of investigation calls for fewer paraprofessional positions and a greater number of professional accountant (or some lawyer) investigative positions. This factor increases the costs associated with this model.

70. Convocation should be mindful that the reference to auditors and examiners should be interpreted as primarily comprised of Law Society staff positions. Any out sourcing of audit services will adversely impact on the number of audits where costs of out sourcing exceed the costs of a staff model.

Number of Teams	Cost	Number of Audit Visits Each Year
2 Teams	$1.9 million/$80 per member	1,500 audit visits * (visitation cycle of about once in 4 years)
3 Teams	$2.86 million/$120 per member	2,250 audit visits * (visitation cycle of about once in 2½ years)
4 Teams	$3.8 million/$165 per member	3,000 audit visits * (visitation cycle of about once in 2 years)

* The number of audit visits is based on each auditor/examiner spending 45 working weeks performing examinations and completing 1-2 audit visits each week for an average total of 75 audit visits each year. One Team would be capable of completing 10 x 75 = 750 audit visits each year on small firms. Where a more intensive review is required at any member's office, the visitation will exceed two days, thereby reducing the number of annual visitations.

Dedicated Audit Team Direct Costs

71. The estimated annual cost of each staff audit team is as follows:

One Supervisor - accountant-	$ 75,000
1 Support Person	$ 35,000
Eight Auditors	$ 560,000
Two Examiners	$ 90,000
Payroll Overhead Burden @ 14 % (rounded)	$ 105,000
Travel Costs (primarily mileage allowances)	$ 60,000
Overhead costs for supplies ($1000/person/rounded)	$ 10,000
Depreciation of computers ($55,000/3 years *)	$ 18,000
Team Total	$ 955,000

* On creation of the team, an equipment expenditure will be required for computers for staff. This expenditure should approximate $55,000, which would be capitalized and expensed over a three year period. The computers would be replaced every three years given wear and tear of travel.

In addition, the Society will be required to make office space available for staff auditors. Given the nature of the position, a shared space arrangement would suffice as many of the staff would be away from the office a significant portion of the time. It may be desirable to locate some of these staff in Ottawa and London to attend to matters in those respective areas of the province. Some expenditures will be required to provide adequate facilities and work stations.

Implementation Issues

72. To put the self reporting model in place will require the following measures:

- Amendment to Regulation 708 with respect to annual lawyer reporting [expected to be passed by the provincial cabinet in December 1997];
- Development of audit programmes for internal and external auditors;
- Prescription of self reporting form [before Convocation in November 1997];
- Hiring and intensive training of audit staff;
- Development of computerized data base profiles to identify members to be the subject of a focused audit [before Committees in January 1998];
- Development of audit program data bases to provide centralized/computerized systems .

POLICY DISCUSSION

The Committee's View

73. Focused and random audits are an essential component of the Self Reporting Model and an integral part of the Society's mandate to protect the public.

74. 95% of lawyers are honest and maintain their books and records in accordance with Law Society regulations. However, due to the transgressions of a few, the entire profession has been subjected to a complicated and often expensive reporting structure.

75. Even now that the requirement to retain a public accountant has been eliminated, the Committee believes the vast majority of the profession will remain honest and conscientious about their record keeping obligations. However, the current reporting structure has not adequately identified fraud and the misuse of trust funds by the few members who abuse the public's trust. The Self Reporting Model permits the Law Society to become more proactive in identifying problems at an earlier stage.

76. The current Private Practitioner Form and the Public Accountant's Report to Lawyer have provided the Law Society with a more complete picture of the activities of private practitioners. With this information in hand, the Society is able to develop profiles of members involved in high risk activities and can concentrate its resources on ensuring those members are in compliance with the Regulation.

77. The profession will benefit from the self reporting model in that members will no longer be required to retain the services of a public accountant (some may choose to do so voluntarily) in order to complete their reporting obligations. This will represent a substantial cost savings to the membership.

78. The continued requirement to report trust account details to the Law Society, together with the compliance benefits associated with audit teams, ensures the public interest is also protected.

79. Having recommended the Self Reporting Model, the Committee was then left to consider the financial resources that would be required to establish a compliance audit programme. At paragraph 69 of this report, a chart is displayed which sets out the financial implications for the annual fee from forming 2, 3 or 4 audit teams. At its meeting the Committee elected to establish 4 audit teams with a corresponding increase in the annual fee of $75. The recommended fee for 1998 is less than indicated on the chart because the programme will be implemented and costs incurred throughout the year. The fee will be higher in subsequent years due to the fact that the programme will be fully functional as at January 1st 1999.

80. The Committee opted for the larger number of audit teams because it felt a more conservative approach was appropriate at this time. Once the Self Reporting Model is in place, the role of the public accountant is removed from the financial reporting scheme. To ensure there is no reduction in compliance of the Regulation respecting books and records, more focused audit visits will initially be required. If experience dictates, the level of audit scrutiny can be reduced if it is shown there is no marked decline in compliance.

Other Options for Managing the Fund's Loss Exposure

81. As part of its overall review of the Fund, the Committee examined the potential institution of a "Two Lawyer Rule" to assist in preventing future claims. A Two Lawyer Rule would require an amendment to the Rules of Professional Conduct and would prohibit lawyers from acting for both lender and borrower in most non-institutional mortgage transactions.

82. In view of its recommendation to adopt the Self Reporting Model and the focused and random audit teams, the Committee decided a Two Lawyer Rule was unnecessary at this time.

Options and Alternatives for Decision by Convocation

83. As outlined above, the long term viability of the Fund requires a substantial increase in the annual levy paid by members. However, the Committee recognizes that such an increase is only justifiable if more preventative action is undertaken to curb future claims. To that end, the Committee recommended and Convocation adopted the Self Reporting Model for annual financial reporting to the Law Society. The Self Reporting Model will only be effective if sufficient resources are allocated to establishing random and focused audit teams.

84. Convocation should determine:

a. Whether to approve the recommended 1998 Lawyers Fund for Client Compensation levy of $245;
b. Whether to approve the recommended 1998 focused and random audit fee of $75.

.....

A debate followed.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:45 P.M.

The Treasurer and Benchers had as their guest for luncheon, Mr. Ronald Rolls, a representative of the Civil Rules Committee.

CONVOCATION RESUMED AT 1:45 P.M.

PRESENT:

The Treasurer, Adams, Armstrong, Angeles, Arnup, Backhouse, Banack, Bobesich, Carey, Carpenter-Gunn, Carter, R. Cass, Chahbar, Cole, Crowe, Curtis, DelZotto, Epstein, Feinstein, Finkelstein, Gottlieb, Harvey, Krishna, Lamont, Lawrence, MacKenzie, Marrocco, Millar, Murphy, Murray, Ortved, Puccini, Ruby, Sealy, Stomp, Swaye, Topp, Wardlaw, Wilson and Wright.

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IN PUBLIC

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RESUMPTION OF THE REPORT OF THE FINANCE AND AUDIT COMMITTEE 1998 BUDGET

It was moved by Mr. Murray, seconded by Ms. Harvey that the Annual Membership levy be reduced by $600 per member and the matter be referred back to the Finance Committee for reconsideration.

Lost

It was moved by Mr. Gottlieb, seconded by Mr. Bobesich that there be an across the board reduction of 42% in each budget line item as set out in Tab 2 of the 1998 Budget.

Lost

It was moved by Ms. Stomp, seconded by Mr. Cole that the Lawyers Fund for Client Compensation Fund levy be reduced to $117 from $245 per member.

Lost

It was moved by Mr. Finkelstein, seconded by Mr. Crowe that the Lawyers Fund for Client Compensation Fund capital fund be reduced to $130 from $245 and spread over two years.

Lost

It was moved by Ms. Stomp, seconded by Mr. Cole that the $75 increase for spot audits be removed.

Lost

It was moved by Ms. Stomp, seconded by Mr. Cole that the Osgoode Hall capital fund be reduced to $25 from $50 per member.

Lost

It was moved by Mr. Finkelstein, seconded by Mr. Crowe that the Technology and Research Infrastructure Fund be reduced to $75 from $150 per member.

Lost

It was moved Ms. Curtis, seconded by Mr. Millar that Dial-a-Law be put back in at $5 per member.

Lost

It was moved by Mr. Swaye, seconded by Mr. Feinstein that there be an $80,000 grant given to the County and District Law Presidents' Association to fund travel and preparation of a business plan in relation to the proposed merger with the Canadian Bar Association-Ontario.

Carried

It was moved by Mr. Topp, seconded by Mr. Adams that the Law Society pay the County and District Law Presidents' Association's travel costs.

Withdrawn

It was moved by Mr. Murphy, seconded by Mr. Cole that the $2 per member levy be included to fund the CDLPA-CBA-O business plan preparation.

Withdrawn

It was moved by Mr. Topp, seconded by Mr. Adams that the Society provide funds to do the portraits of 2 Chief Justices.

Carried

It was moved by Mr. Krishna, seconded by Mr. Ruby that the 1998 Budget be approved and the annual membership fee be set at $1,747.

Carried

Item: Policy regarding Projects and Programs

It was moved by Mr. Topp, that the matter regarding the policy on new projects and proposals having a financial impact be deferred.

Lost

It was moved by Mr. Krishna, seconded by Mr. DelZotto that in the normal course of business, all new projects and programs having a financial impact on the Society's operations be reviewed by the Finance and Audit Committee before proceeding to Convocation and only under exceptional circumstances should they proceed directly to Convocation along with full financial justification.

Carried

The items relating to the budget in the September 4th, 1997 Report of the Lawyers Fund for Client Compensation Committee were adopted.

The November 28th, 1997 Lawyers Fund for Client Compensation Report was presented for information only.

The Lawyers Fund for Client Compensation
November 28, 1997

Report to Convocation by the
Chair of the Lawyers Fund for
Client Compensation Committee

Purpose of Report: Information

1. The Lawyers Fund for Client Compensation Committee is recommending to Convocation that the annual Fund levy be increased from $1 to $245 per member with the usual adjustments for members who do not pay the full fee. The recommendation now has the support of the Finance and Audit Committee. During deliberations in both committees, several issues were raised which I will address in this report.

What would be the implication of reinstituting the $1 million per member cap?

2. Between 1965 and 1987 the Fund had a per member cap in place. The last per member cap was $1 million. In other words, in the period prior to the elimination of the cap, grants paid to all claimants on behalf of any one member could not exceed $1 million.

3. Pursuant to s. 51(6) of the *Law Society Act*, no grant may be paid unless the Society receives written notice of the loss within six months after it comes to the attention of the person suffering the loss. As it is a subjective test, it is not unheard of for claimants to become aware of losses years after they occur. When a cap was in place, the result was that payments to claimants who filed the first claims were being delayed several years.

4. The practical effect of having a cap in place is that in those cases where grant payments are expected to be significant, all claims must be received and evaluated before any grant payments may be made. If the cap would be exceeded, all payments would be reduced on a pro rata basis to bring the total under the limit. This resulted in significant delays in payments and vocal criticism of the Law Society; some of it picked up by the media.

5. The $1 million cap could only apply to grant applications being made against members for which we have yet to make grant payments. To do otherwise would have the effect of treating claimants differently for applications against the same lawyer. For example, the Fund is currently reviewing claims against members for which we have already paid out grants in excess of $1 million. If a cap were to apply to these claimants, they would not be eligible for any grant whatsoever despite the fact that others may have already received substantial grants.

6. There is one former member being dealt with by the Fund where the first claims arrived in 1991. Legitimate claims were still being received as of the writing of this report. Claimants have been exhausting civil remedies (the Fund is a remedy of last resort) or are just discovering the true nature of their losses. Grant payments on behalf of this member have already exceeded $1 million. Had a $1 million cap been in place, some claimants would be waiting six or seven years to receive payment. The elimination of the $1 million per member cap has had a major impact on the Fund's ability to pay grants to deserving claimants in a timely manner which has virtually eliminated public criticism.

7. The absence of a cap has not had a significant impact on the financial integrity of the Fund. Since 1988 there have only been four instances where the Fund has paid in excess of $1 million on behalf of any one member. The largest of the four cost the Fund $2.5 million. The remaining three cases cost $1.2 million, $1.3 million and $1.7 million respectively. While there have only been four occasions where a $1 million cap would have become a factor, had it been in place 383 claimants or approximately 40% of all claimants from the last ten years would have had their grant payments delayed by years.

8. Had a $1 million per member cap been in place since 1988 thereby limiting payments on those four occasions when it would have been exceeded, the Fund would have saved approximately $2.7 million or $12 per member in each of the last ten years. If a $1 million cap were instituted as of January 1st 1998, the actuary predicts his 1998 levy recommendation of $245 could be lowered by $45 to $200. The Committee considered and rejected this.

What would be the implication of reducing the current per claimant limit of $100,000 to $60,000?

9. In 1989 the Compensation Fund Committee commissioned an actuarial report to study the implications of raising the per claimant limit from $60,000 to $100,000. There was a feeling among members of the Committee that the $60,000 limit was inadequate with the effects of inflation and the rapid rise in the value of real estate in Ontario. The report concluded that such a move would not have a significant effect on the financial integrity of the Fund. The report estimated that in 1990 the Fund would receive gross claims of $3 million. With the $60,000 limit applied, the maximum exposure fell to $1.2 million. If a $100,000 limit were in place, the exposure increased $300,000 to $1.5 million. Similar results were predicted for 1991. In view of the limited financial impact and the benefits of increased protection for the public, the Committee recommended and Convocation adopted the $100,000 per claimant limit in May of 1990. To date, the per claimant limit remains $100,000.

10. Whether a claimant is entitled to a $60,000 limit or $100,000 limit has traditionally been determined on the basis of when the funds were provided to the lawyer. For example, even if a claim were received in 1997, the claimant would only be entitled to the $60,000 limit if he/she provided the funds to the lawyer prior to May of 1990. It would be a marked departure from past practise to impose a limit on claimants by virtue of when their claim was received. Notwithstanding this departure, the actuary has made assessments based upon an assumption that if the per claimant limit were reduced from $100,000 to $60,000 effective January 1st 1998, that all claims received after that date would be subject to the $60,000 limit. When the funds were provided to the lawyer would become an irrelevant consideration. With these assumptions, the actuary has determined that the 1998 levy could be reduced by $35 from $245 to $210 if the per claimant limit were set at $60,000 as of January 1st 1998.

What would be the affect on the annual fee recommendation of introducing both a $60,000 per claimant limit and a $1 million per lawyer limit?

11. The actuary estimates the annual fee could be lowered from $245 to $180 if both a $60,000 per claimant limit and $1 million per lawyer cap were introduced effective January 1st 1998.

What if the Fund surplus were allowed to fall from $9.1 million to $6 million?

12. One of the assumptions made in the actuarial report that recommends the 1998 levy be set at $245 is that the surplus in the Fund as at December 31st 1997 be the same as at December 31st 1998, i.e. that the surplus should not be allowed to fall further.

13. The surplus of the Fund is distinct from its balance. The balance of the Fund as at the end of 1997 is estimated to be just under $20 million. However, this figure can be somewhat misleading as it does not take into account the liability for grant payments on account of claims already on file. Nor does the balance figure make allowance for the future administrative expenses required to process the current claim files. The reported surplus figure is net of estimated future grants and administrative expenses and is a more accurate representation of the Fund's uncommitted resources that will be needed for future claims.

14. The actuarial report estimates the surplus of the Fund at December 31st 1997 to be $9.1 million. By way of comparison, as at December 31st 1990 that surplus was $26 million. Tab 1 is a graph showing the steady decline in the surplus of the Fund since 1990 and how the decline has accelerated in just the last year [it was $13.8 million as at December 31st 1996].

15. Tab 2 is a graph which plots the various Fund levies assessed since 1981. Throughout most of the 1980's, the levy exceeded $200. Tab 3 is a graph which plots both the number and incurred value of claims reported since 1981. When viewed together, the two graphs demonstrate that during the 1980's, the number and dollar value of claims received were much lower than present levels while at the same time the levy was much higher. This situation allowed the surplus capital in the Fund to grow.

16. In the 1990's levies were set at a nominal $1 per member but the number and dollar value of claims skyrocketed with the result of depleting capital reserves. With these trends the financial situation will continue to deteriorate to the point that if the status quo is maintained, the Fund would be exhausted at some point in the year 2001.

17. The commitment to maintain the surplus at $9.1 million is based on a conservative fiscal management policy. This is a volatile fund, and by actuarial standards related to size of claim, a small one. The actuary has advised the Society not to allow the surplus of the Fund to decrease below its present level of $9.1 million. It would be possible to allow the surplus to fall to $6 million. If this target is adopted, capital could be permitted to fall by $3.1 million in 1998 [$9.1 million - $6 million].

18. If the surplus capital was allowed to fall to the $6 million level, the 1998 levy could drop from $245 to $117. However, if this were to happen, the Lawyers Fund for Client Compensation Committee believes the Fund's uncommitted cash reserves would be vulnerable should it experience a sudden increase in claims as it did in 1997 [and there is no evidence currently available to suggest the trend will not continue]. This is not to say the Fund would immediately run out of cash and be unable to meet its grant obligations but rather its uncommitted reserves would likely be depleted. There is, simply, no reason to anticipate a claims level that could be sustained by a $6 million surplus.

19. Earlier this year the Fund learned of defalcations by a single member where grants will eventually cost in the range of $3 to $5 million. Due to the fact that the Fund is relatively small when viewed in relation to the dollar value of claims it receives and the actions of a single member can drastically reduce surplus capital in a very brief period of time, the Committee decided to adopt the actuary's recommendation that present surplus capital levels be maintained. The Committee's view was that there may be those who wish to ignore independent actuarial advice on such a fundamental matter, but the Committee does not believe it would be responsible to do so.

INFORMATION

The Effect of LPIC's `Innocent Party' Coverage

20. Under the current insurance program, `innocent partner' coverage is a mandatory coverage provided to practitioners practising in partnership or association with others, and is subject to a standard sublimit of $250,000 per claim and in the aggregate over the policy period. The additional premium charged for this coverage is $400 per member.

21. The current program does not provide `innocent party' coverage to sole practitioners and such coverage is not available in the commercial markets. With fundamental changes coming in real estate conveyancing, notably the introduction of electronic registration, escrow closings will become the norm. Such closings are of concern to financial institutions which have expressed a reluctance to forward funds to counsel without insurance which covers fraud. This reluctance is compounded by the fact that financial institutions are not eligible to receive grants from the Compensation Fund.

22. In part to address these issues, LPIC proposed and Convocation adopted at its September 1997 meeting a recommendation to make `innocent party' sublimit coverage available, on a voluntary basis, to sole practitioners effective January 1st 1998. In situations where the coverage is in place, the LPIC policy will become the first avenue of recovery for clients that suffer a financial loss due to a lawyer's dishonesty. The Fund would only become involved when a member's $250,000 sublimit is exceeded. However, the impact on the Fund in 1998 is not expected to be large due to the following factors:

- with the coverage being optional, it is too early to predict how many members will purchase it;

- much of the incentive to purchase the coverage will come from the introduction of electronic real estate registration. With full implementation of this program not expected until sometime in the year 2000, the incentive for all members will not be felt for several years;

- the coverage will only apply for acts committed after the member applies for the coverage. It is expected that most of the Compensation Fund claims to be received in 1998 will be for acts committed in 1997 or earlier;

- as the coverage is a new concept for sole practitioners, its acceptance and the demand for it will not be immediate.

23. The 1998 experience will provide us with a much better indication of the impact of innocent party coverage when the time comes to set the 1999 Compensation Fund levy.

24. Innocent party coverage was not made mandatory in 1998 for primarily financial and pricing reasons. While the coverage is being offered for the reasons stated above, it is recognized that `innocent party' is not the most efficient vehicle for providing protection against fraud.

25. The coverage offered by LPIC is pursuant to a contract of insurance. Therefore, it covers items such as consequential damages which increases the cost of those losses to the profession. The Fund, however, does not pay interest, costs, expenses or consequential damages thereby reducing the cost of losses. In addition, the Fund can impose major reductions in grants on account of the claimants' own carelessness or the risk they assumed with certain investments. This flexibility is not necessarily available when the relationship between the claimant and the loss payee is governed by contract.

26. It should also be noted that the insurance premiums charged by LPIC are subject to premium tax whereas the levies charged by the Compensation Fund are not. This further decreases the cost to members of losses resulting from dishonesty.

Does it make sense to merge the Compensation Fund with LPIC?

27. Throughout the year both LPIC and the Lawyers Fund for Client Compensation Committee have been examining ways to ensure more comprehensive and responsive protection is available to the public against losses due to the dishonesty of members. Innocent party coverage and providing relief to clients whose lawyers wilfully refuse to report a claim or co-operate with LPIC are some of the results of that goal. A merger of some or all of the Fund's activities into LPIC was also considered.

28. The rationale for the suggestion is that when aggrieved clients have suffered financial losses through the fault of their lawyers, it is easier for them to approach a single, unified body for compensation as opposed to two, separate entities. The members of the Lawyers Fund for Client Compensation Committee were unanimous in the view that such a move was not in the best interests of the public or the profession. The Committee was of the opinion that both entities' served very different purposes and that it would be difficult to maintain that distinction under a unified management structure.

29. LPIC is operated as a commercial enterprise and owes its highest duty to its policyholders; the lawyers of Ontario. The Lawyers Fund for Client Compensation is a trust operated by the Law Society for the benefit of the public. The Committee felt that the Fund's and the public's best interests lay in maintaining the Fund's status as a separate entity and that this goal far outweighed any benefit to be gained from merging activities.

30. LPIC has also rejected the merger proposal believing it did not make economic sense and therefore there was no real incentive to undertake it.

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

(1) Graph re: Fund Balance, Net of Unpaid Claims. (Tab 1)
(2) Graph re: Annual Levy 1981 - 1998. (Tab 2)
(3) Graph re: Fluctuation in Number and Incurred Value of Claims Reported in Period. (Tab 3)

Mr. Krishna thanked Mr. Saso, Ms. Tysall and Mr. Carey for their work on the Budget.

NOTICE OF MOTION - to be moved in Convocation on December 12th, 1997

Re: Amendment of Rules made under subsection 62(1) of the Law Society Act - Rule 56: Use of "Private Practitioner's Report".

MOTION deferred re: Amendment of Rule 50 made under subsection 62(1) of the Law Society Act re: Professional Liability Levies

FOR INFORMATION ONLY

Paralegal Task Force

A memorandum from Mr. Richmond Wilson, Chair of the Unauthorized Practice Committee dated November 24th, 1997 was circulated to the Benchers.

(copy of memorandum in Convocation file)

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 Frank Radley Mott-Trille, of the City of Brampton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 22nd day of January, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Charles C. Mark, Q.C., wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Frank Radley Mott-Trille be granted permission to resign his membership in the said Society within seven days, failing which, that he be disbarred, and thereby be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 21st day of October, 1997

"P. Epstein"
Acting 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 Raymond Vincent Donohue of the City of Sarnia, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada pursuant to its Order of the 26th day of June, 1997 hereby orders that Raymond Vincent Donohue be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 14th day of October, 1997

H. Strosberg"
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 Edmond O'Donoghue Brown, of the City of Brampton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of February, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Edward Greenspan, Q.C. wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Edmond O'Donoghue Brown be reprimanded in Convocation and pay Law Society costs in the amount of $3,000.00.

DATED this 25th day of September, 1997

"H. Strosberg"
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 James Douglas Manfred Leopold Schlosser Barnett, of the City of Etobicoke, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 26th day of February, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Harry Black, Q.C., wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that James Douglas Manfred Leopold Schlosser Barnett be suspended for a period of one month commencing on October 14, 1997 and that he pay Law Society costs in the amount of $5,000.00 payable within sixty days, failing which he be suspended indefinitely until payment is made.

DATED this 25th day of September, 1997

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David Samuel Hovland, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 11th day of August, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

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

DATED this 25th day of September, 1997

"H. Strosberg"
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 John Rorie Dingle, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 16th day of May, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that John Rorie Dingle be suspended for a period of one month effective as of the date of this Order and continuing indefinitely thereafter until he has paid to Cydney G. Israel the amount of $719.67.

DATED this 25th day of September, 1997

"H. Strosberg"
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 Seymour Elliot German, 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 Canad, having read the Report and Decision of the Discipline Committee dated the 27th day of July, 1997, in the presence of Counsel for the Society, the Solciitor being in attendance and represented by Theodor Kerzner, Q.C. wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Seymour Elliot German be suspended for a period of one month commencing October 1, 1997 and that he be prohibited from acting for both sides of a real estate transaction involving a private, non-institutional mortgagee and mortgagor in the same transaction.

DATED this 25th day of September, 1997

"H. Strosberg"
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 Jane Ann Ledwon, of the City of North Bay, 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 of the Committee of Convocation dated the 18th day of August, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance but represented by Charles Mark, Q.C. wherein the Solicitor was found incapable of practising law by reason of mental illness and having heard counsel aforesaid;

CONVOCATION HERREBY ORDERS that Jane Ann Ledwin's rights and privileges as a member be suspended until such time as Convocation is satisfied, based upon a report of a Committee of Convocation, that she is no longer incapable of practising law by reason of mental illness.

DATED this 25th day of September, 1997

"H. Strosberg"
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 Karen Lea Crozier, of the City of Toronto, a Barrister and Solciitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 21st day of May, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by Counsel, wherein the Solciitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Karen Lea Crozier be reprimanded in Convocation.

DATED this 25th day of September, 1997

H T Strosberg

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

CONVOCATION ROSE AT 3:15 P.M.

Confirmed in Convocation this 23 day of January 1998

Harry T Strosberg

Treasurer