11th June, 1998

MINUTES OF SPECIAL CONVOCATION

Thursday, 11th June, 1998
9:00 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Carey, Carter, R. Cass, Chahbar, Copeland, Cronk, Crowe, Curtis, DelZotto, Eberts, Epstein, Farquharson, Feinstein, Finkelstein, Gottlieb, Jarvis, Krishna, Lamek, Lamont, Lawrence, Legge, MacKenzie, Marrocco, Martin, Millar, Murphy, Murray, Ortved, Puccini, Ruby, Sachs, Stomp (conference call), Swaye, Topp, Wardlaw, Wilson and Wright.

.....

The reporter was sworn.

.....

IN PUBLIC

.....

MOTION FOR AN INTERIM SUSPENSION

RE: Roland William PASKAR - Mississauga

Ms. Elizabeth Cowie appeared on behalf of the Society. The solicitor was not present.

Ms. Cronk withdrew for this matter.

At the request of Mr. Topp, counsel, the reporter and the public withdrew and Convocation went in camera for a brief discussion on whether the matter should be heard in camera. It was the general consensus that the matter be dealt with in public in accordance with the Statutory Powers Procedures Act.

Counsel, the reporter and the public were recalled and informed that the test in accordance with the SPPA for the matter to be heard in camera had not been met.

Ms. Cowie made submissions that the solicitor had been served in accordance with the Act.

Ms. Cowie advised that the solicitor requested the matter be adjourned for 2 weeks in order to respond to the motion.

The Secretary placed before Convocation the Affidavit of Service served by process server and filed as Exhibit 1. The letter from the solicitor dated June 11th, 1998 was filed as Exhibit 2.

Ms. Cowie made submissions as to why the matter should proceed.

There were questions from the Bench.

Counsel, the reporter and the public withdrew.

There was a discussion on procedural matters.

Counsel, the reporter and the public were recalled and counsel was advised that the matter would be put over until 2:00 p.m. and that the solicitor should be contacted by fax and by telephone. Counsel was also instructed to be prepared to speak to the issue regarding section 33 of the Law Society Act.

Regular Convocation reconvened.

REPORT OF THE ADMISSIONS & EQUITY COMMITTEE

Admissions & Equity Committee
June 11, 1998

Report to Convocation

Purpose of Report: Decision Making

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions & Equity Committee (the "Committee") met on June 1, 1998. Committee members in attendance were Philip Epstein (Chair), Nancy Backhouse (Vice-Chair), William Carter (Vice-Chair), Nora Angeles, Tom Carey, Don Lamont, Robert Martin, Dean Marilyn Pilkington, Dean Sanda Rodgers, and Harriet Sachs. Bradley Wright attended by telephone for part of the meeting. Staff in attendance were Mimi Hart, Ian Lebane, Mary Shena, Sophia Sperdakos, Alan Treleaven, and Roman Woloszczuk.

2. The Committee is reporting on the following matters:
   - Bar Admission Course Reform Process
   - Task Force on Examination Performance
   - French Language Component of the BAC
   - Licensing Examination Review
   - Summer Student Recruitment Procedures
   - 50% Limit on Recruiting Summer Students as Articling Students

BAR ADMISSION COURSE REFORM PROCESS

1. The report on Bar Admission Reform is contained at Tab 3 for Convocation's consideration. Material related to financial considerations will be provided under separate cover.

2. The mandate of the Admissions and Equity Committee includes developing for Convocation's approval policies to ensure that the accreditation process operates in a "reliable, fair, open and equitable manner". The report seeks direction on the nature of the accreditation process Convocation wishes to authorize.

3. As set out and discussed fully in the report, Convocation is asked to decide
   a) whether candidates for admission to the bar should
      i) complete a bar admission education, training, and testing program; or
      ii) undertake a self-study licensing examination requirement; and

   b) whether, regardless of which choice under (a) is made, candidates should be required to complete an articling program.

TASK FORCE ON EXAMINATION PERFORMANCE

1. In September, 1997 Convocation established the Task Force on the Examination Performance of Aboriginal and Visible Minority Students with the following terms of reference:

   (i) to investigate the performance of Aboriginal students and students of visible minority groups in the Bar Admission Course (the "BAC"); and
   (ii) to report to Convocation on the results of its investigation and, if warranted, options on how best to address the issue.

2. The Task Force's Report, preceded by an Executive Summary, is contained at Tab 4. The Task Force's mandate requires it to report directly to Convocation. The Chair of the Task Force, Nancy Backhouse, is a Vice-Chair of the Admissions & Equity Committee. The Committee has provided some input on the report and its recommendations.

3. As Convocation considers the nature of the recommendations it may be helpful to note the following:

a)	Recommendations 6 and 7:	Convocation made decisions in March 1998 to implement the policies expressed in these recommendations.
b)	Recommendations 8 and 9	These relate to student support services and tutoring; the Department of Education has begun to implement the recommendations.
c)	Recommendations 16-19	These relate to comments about the specific draft model for BAC reform presented to the Task Force at its meeting in January 1998. Consideration of these recommendations is properly deferred to a later date.
d)	Recommendations 3, 4, and 11	These have cost implications to be considered.

4. The Committee proposes that Convocation approach the recommendations as follows:

Recommendations 1 - 5	to be voted on (including cost considerations for 3 and 4)
Recommendations 6 and 7	confirm, as already approved
Recommendations 8 and 9	to be voted on, confirming actions already taken
Recommendation 10	confirm as already approved within Gavin MacKenzie's report to Convocation on the NCA
Recommendations 11-15	to be voted on (including cost consideration for 11)
Recommendations 16-19	defer voting
Recommendation 20	to be voted on

FRENCH LANGUAGE COMPONENT OF THE BAC

1. The mandate of the Admissions and Equity Committee includes developing for Convocation's approval policies to ensure that the accreditation process operates in a "reliable, fair, open and equitable manner".

2. In furtherance of this mandate a Subcommittee of benchers, French language course instructors and students, representatives of l'AJEFO, the Vice-Dean of the common law French language program at the University of Ottawa, and Department of Education staff has been studying, at some length, a number of issues concerning the French language component of the BAC.

3. The interim report of the Subcommittee was considered by the Committee and provided to Convocation in September 1997.

4. The Subcommittee has now prepared its final report. The report is contained at Tab 5. In considering the report the Committee expresses its thanks to the Subcommittee for the extensive work it has done.

5. The Committee accepted the Subcommittee's report. The Admissions & Equity Committee is of the view that, overall, implementation of the recommendations will assist in improving the accreditation process.

6. The Committee proposes that Convocation consider the recommendations as follows:

Recommendations 1-6	should be approved for implementation.
Recommendation 7	should be amended to read: *In order to reduce the time pressured nature of BAC examinations, the scope of material currently examined in two and one-half hours should be examined in three and one-half hours.*[1]
Recommendation 8	should be amended to read: *The evaluation of students in the French BAC should not be done by norm-referencing, but by a criterion-based approach.*
Recommendations 9 and 10	should be approved for implementation.
Recommendation 11	should be referred for further study to determine how such a project could best be undertaken with the cooperation and input of the law schools.
Recommendation 12	should be approved for implementation[2].
Recommendations 13 and 15	should be studied further for cost implications.
Recommendation 14 and 16-21	should be approved for implementation.
Recommendation 22	should be deferred to determine what role the Law Society can reasonably play in encouraging POLAJ.
Recommendations 23, 24, 26, 28	should be approved for implementation.
Recommendation 25	is not within the Law Society's jurisdiction, but to the extent that the Law Society can approve the principles enunciated in the recommendation it should do so and the recommendation can be communicated to the law schools.
Recommendation 27	should be deferred for further study of the manner in which such a communication can best be done.

LICENSING EXAMINATION REVIEW

Background to the Issue

1. On March 27, 1998 Convocation approved a change to its 1996 licensing examination policy to permit students to review their failed examinations and the marking guides. Specifically, Convocation approved that:

---

[1]This is the same as recommendation 5 in the Report of the Task Force on Examination Performance.

[2]Because of the amount of time required to draft examinations, this pilot project has already been undertaken.

students be permitted to review their failed examination papers in a supervised review session as was used in January 1998. (In January students were permitted to look at failed examinations, but without access to writing tools or paper).

2. Convocation also approved a proposal for implementing a system to assist students in preparing for examinations and to provide additional assistance for students who anticipate specific difficulty, based on past examination experience, or who begin experiencing difficulty in the licensing examination process. The system would include a comprehensive self-study examination preparation book, focusing on the development of examination writing skills specific to BAC examinations, and optional examination preparation sessions.

3. In March Convocation also indicated that there should be a further analysis of whether students should be entitled to bring writing materials with them into an examination review session or be permitted to have a copy of their failed examination. Because of the potential impact of such a change in policy on the examination system Convocation approved in 1996, consideration of this issue was postponed to seek further information on the impact of such a change.

4. The issue has been affected further by the breach in the examination bank security discussed in Committee and Convocation in May.

Nature of the Issue

5. In 1996 Convocation approved changes to the rules and marking procedures for the bar admission licensing examinations. As part of the new procedures the Department of Education began developing an examination bank of confidential questions. Under the process students were not to be permitted to see their failed examinations or have copies of those papers in order to maintain the confidentiality of the examination bank.

6. Both because the policy adopted by Convocation in March 1998 affects the confidentiality of the examination bank and because of the examination breach that was discovered in May the Department of Education has advised the Committee that, in its assessment, the examination bank cannot be assumed to be secure.

7. In view of these facts, the Committee has considered whether it is advisable to continue to maintain secure reviewing sessions or simply permit students to have copies of their failed examinations and marking guide.

Consideration of the Issue

8. The Committee has considered both the advantages and disadvantages of allowing students to have copies of their failed examinations. The Committee is of the view that the development of an examination bank is an important feature for the licensing examination process, both because it enhances the quality of the questions asked from year to year and because it has the enormous potential to reduce the immense workload of the Sections Heads and volunteers who devote significant amounts of time to examination drafting.

9. Having said that, however, the Committee is of the view that, in light of the examination breach that has occurred and since security is further affected by provisions that allow students to review their examinations, it is more helpful to students and more administratively effective to provide students with a copy of their failed examination and marking guide.

10. The Committee is strongly of the view, however, that it must continue to be the policy that there is no appeal from a failed examination. Rather, as Convocation indicated in recommending an examination review, the purpose of the review is to allow students to see where they went wrong in the examination, with a view to improving their performance in subsequent examinations and on supplementals.

11. Because the experience has been that students who review their failed examinations and marking guides will frequently place pressure on volunteer lawyers and faculty and staff to provide a further review of the failing grade there has been a regrading policy in place in 1996 and 1997, the 1997 provisions being as follows:

(1) Subject to subsection (3) and (4), a student who fails a licensing examination, but receives a grade equal to or greater than 90 per cent of the passing score for that examination, will automatically have the examination regraded.
(2) The grade assigned on the regrading is final, and the reasons for the assigned grade will not be provided.
(3) Licensing examinations that are computer scored are not regraded.
(4) The licensing examination in Accounting is not regraded, but students may write a supplemental Accounting examination.
(5) There is no other review and no appeal from a failed licensing examination.

12. In order to broaden the range of failed examinations that may be regraded the Committee proposes that eligibility for the regrade be lowered to 80% of the passing score and the following sections be added to the 1998 Academic Policies and Procedures approved by Convocation in May 1998 as follows:

REGRADING OF FAILED LICENSING EXAMINATION

Regrading Failed Licensing Examination

4. (1) Subject to subsections (2) and (3), if you fail a licensing examination, but receive a grade equal to or greater than 80 per cent of the passing score, you may apply to have that licensing examination regraded.
(2) Licensing examinations that are computer scored are not regraded.
(3) A student may not apply to have the licensing examination in Accounting regraded, but may write a supplemental Accounting examination in accordance with section 6.
(4) Your regrade request must be made using the "Application for Regrading of a Failed Licensing Examination", and you must submit it to the Bar Admission Course office within five business days after the day on which the fail grade is released.
(5) You must submit a separate form for each licensing examination.
(6) You may apply in writing to the Registrar for an extension of time within which to file the Application.
(7) The Registrar may grant the extension only if satisfied that you did not file the Application within the prescribed time due to a significant medical or compassionate reason that is not employment-related.
(8) The Registrar may require you to provide documents substantiating your request under subsection (6).

Regrading Process

5. (1) No documents, other than the Application for Regrading of a Failed Licensing Examination required under section 4(4), will be considered in the regrading.
(2) Your final grade is the greater of your original posted grade and the grade assigned on the regrading, and reasons for the assigned grade will not be provided.

The balance of the sections in the Academic Policies and Procedures will be re-numbered accordingly.

Request to Convocation

13. Convocation is requested to consider the issues and options and select which approach is to be followed in Phase Three 1998:

a) Students who fail an examination will be provided with a copy of their failed examination paper and the marking guide for that examination, which they may keep.

b) Students will be permitted to review their failed examination papers in a supervised review session, as was used in January 1998. (No change from the policy Convocation adopted in March 1998.)

14. Convocation is also requested to approve the addition to the 1998 *Academic Policies and Procedures* as set out in paragraph 12 above.

SUMMER STUDENT RECRUITMENT PROCEDURES

Background to the Issue

1. In March 1998 the Admissions & Equity Committee established a working group to examine the issue of summer student recruitment procedures in Toronto and, in particular, to review the current recruitment procedures, explore options for addressing the problems raised by U.S. firm recruitment, and provide an options paper to the Admissions & Equity Committee in June, 1998.

2. The report of the working group is contained at Tab 6. The Committee is grateful to the working group for its thorough analysis of the issues and provision of a range of options for the Committee's consideration.

The Working Group Report

3. The Chair of the working group is J. Jay Rudolph, lawyer & mediator, and former Chair of the Law Society's Articling Sub-Committee. The Members of the working group are: Gina Alexandris, Career Development Officer ("C.D.O"), Osgoode Hall Law School (member of the Canadian Legal Career Development Network and acting as a liaison to the law school administration); Monica Biringer, Student Committee Chair, Osler, Hoskin & Harcourt; Marilyn Bode, former Articling Director for the Law Society and currently Director of Student Programs, McCarthy, Tétrault; Julie Dabrusin, BAC student representative (and graduate of the University of Toronto Faculty of Law, articling with Rogers, Moore); Mimi K. Hart, Placement Director for the Law Society (and Acting Articling Director for the Law Society); Steve Leckie, BAC student representative (and graduate of Dalhousie Law School, articling with the Department of Justice); and, Paul B. Schabas, Student Committee Chair, Blake, Cassels & Graydon.

4. The impetus for the establishment of the working group was the concern expressed by an increasing number of large Toronto law firms that because U.S. firms are not bound by the summer student recruitment procedures that govern Toronto firms they have been able to offer employment to Ontario law students before Toronto firms are even permitted to interview. Typically U.S. firms visit Ontario law schools in November interviewing students in first term, whereas Toronto firms must wait until February before being entitled to recruit.

5. At the same time as the large firms were expressing these concerns, other parties, such as some law students and law schools, were expressing concern that the entire summer recruitment procedure not be overturned to address a problem that currently appears to affect approximately 40 students per year.

6. In an effort to consider the range of options for dealing with the issues, the working group canvassed the advantages and disadvantages of four different recruitment models and three components that could be added to the recruitment procedures. These are fully discussed and analyzed in the working group report, and identified as follows:

a. Status Quo Model
b. Law Society Withdrawal Model
c. Fall Recruitment Model
d. Summer Recruitment Model
e. Early Interviews Option
f. Hybrid Option
g. Special Exemptions Option

7. The working group considered that three of the options (a., c., and g.) are more viable than the others, but it is indicative of the range of interests that must be addressed that none of the options receives the unanimous support of all interested parties.

8. It is also important to note that the working group was not in a position to assess the actual impact of any of the options on the market place. A number of factors affect student decisions on where and with whom to seek employment. It will be vital to monitor and evaluate any option chosen to assess the impact.

The Role of the Committee in Evaluating the Working Group Report

9. Convocation's 1988 decision to become more involved in the regulation of summer student recruitment reflected its concern that the process be as fair to participants (law firms, law schools, and students) as possible. Summer student hiring has a direct impact on articling positions in Toronto. Although summer employment in law firms is not a required part of the licensing process, articling is mandatory and therefore regulated by Convocation as part of its mandate.

10. It must be presumed that in becoming involved in the summer recruitment process Convocation considered that its involvement was necessary and within its mandate to govern the profession in the public interest.

11. In considering the working group report and the nature of its own report to Convocation the Committee has addressed the following:

a) Does there continue to be a reason for the Law Society to govern summer student recruitment procedures in Toronto?
b) If so, what factors should govern Convocation's consideration of an appropriate policy for summer student recruitment in Toronto?
c) Which of those options presented by the working group best reflects those considerations?

Does there continue to be a reason for the Law Society to govern the summer student recruitment procedures in Toronto?

12. The likely reasons for which the Law Society is currently involved in regulating the process are set out in paragraph 9 above. It is particularly important to highlight the direct link between the process that regulates summer student recruitment and the process that regulates articling recruitment. Summer student hiring provides firms in Toronto (particularly large firms) with a valuable pool from which they may hire articling students. In effect, firms are able to begin the articling recruitment process through the summer student program. It is arguable that a properly regulated summer student recruitment process ensures that the articling recruitment process will operate more fairly to the benefit of all students. The Committee is of the view that the Law Society has a responsibility to continue to regulate the summer student recruitment process, in effect, as an offshoot of its authority to make rules regulating the articling process.

13. The working group considered and rejected an option in which the Law Society would withdraw from regulating the summer recruitment process. From the perspective of all interested parties an unregulated system would be fraught with problems and potential abuses.

What factors should govern Convocation's consideration of an appropriate policy for summer student recruitment in Toronto?

14. The Committee is of the view that in assessing the appropriate nature of the Law Society's involvement in the summer student recruitment process Convocation should consider the following factors:

a) Unlike any of the other parties with an interest in the issue the Law Society must primarily seek to balance competing interests so that the recruitment process is as responsive to the needs of the parties as possible, while at the same time maintaining the integrity of the process.

b) Because Convocation is being asked to consider implementing any revisions to the current recruitment procedures immediately it must consider the feasibility of particular options for the upcoming recruitment year.

c) Convocation should keep in mind that there is little or no evidence of the likely impact of any of the options presented by the working group. Convocation must carefully assess not only whether the options may address one aspect of the problem, but also whether they may create other ones.

Which of those options presented by the working group best reflects those policy considerations?

15. In its analysis of the working group report the Committee has focused on considering the three options the working group considered the most viable. These are:

a) The Status Quo Model (see pages 8-9 and 18 of the working group report for a full discussion)

This model entails retaining the current recruitment process, which occurs in February in concert with the mid-winter break of the majority of law schools whose graduates qualify for admission to the Bar Admission Course.

b) Fall Recruitment Model (see pages 10-11 and 17-18 of the working group report for a full discussion)

This model involves moving summer student recruitment from February of the school year back to the fall. In other respects, the procedures for fall recruitment mirror the current recruitment procedures discussed in the Status Quo Model.

c) Special Exemptions Option [to be employed in conjunction with the Status Quo Model] (see pages 13-14 and 18-19 of the working group report for a full discussion)

This option was developed as a transition option until the need to adopt a different recruitment model is more persuasively demonstrated. It involves providing special exemptions to students who receive offers from U.S. or other firms in the fall so that they may engage in summer student recruitment activity (interviews and offers) with Toronto firms before they would be required to respond to the out of province offer. This option would involve the Law Society granting exemption letters to students with out of province offers who wish to meet with Toronto firms.[3] It would also restrict firms participating in special exemption recruitment to hiring no more than the equivalent of 20% of their previous year's articling complement from among students with special exemptions.

---

[3] This is not unlike the current practice whereby students unavailable to interview in the prescribed week may apply to the Law Society for exemption to be interviewed early. However, the existing early interview exemption does not permit offers to be made. Students seeking special exemptions to interview and receive offers of summer employment in the Fall would be expected to provide evidence to the Law Society of their out of province offer before being granted a special exemption.

16. The working group report states that the law firms prefer the fall recruitment option because it provides them with the best opportunity to compete against those recruiting from outside the province. Although the firms acknowledge that there are other factors contributing to decisions to go outside the province for work, under the current system the Toronto law firms are precluded from even trying to persuade students with offers from New York and elsewhere to remain in Toronto. This is a barrier and so long as it exists there is no way of assessing how significant other factors are in accounting for the move out of the province.

17. Most of the law schools have serious reservations about the fall recruitment process. In their view, moving the recruitment period from February (which in the case of most of the law schools coincides with the mid-winter break when there are no classes) back to the fall will affect the teaching and learning environment. The fall curriculum to be covered does not lend itself to introducing a "break week" to accommodate recruiting. There is some concern as well that this model will almost certainly fragment summer student recruitment into two segments: a fall schedule for 2nd year students; and a later program for 1st year students. Access issues also arise in any option that schedules recruitment when students might have to incur additional transportation costs. This is particularly a concern for Ontario students attending out-of-province law schools. Approximately 15% of students in the average Law Society bar admission class have graduated from an out of province law school.[4]

18. Whereas the status quo seems to be acceptable to most law students and law schools, it does not address the issue raised by the large law firms. Even if the problem affects a small percentage of students from an overall pool of worthy candidates the large firms have an interest in being able to have access to the full market.

19. The status quo option, coupled with a special exemption provision, is an attempt to address the problem of out of province recruitment, while minimizing the disruption to the law school education and student schedules. The law firms do not see this as sufficiently broad to cover their concerns and interests, but the working group was aware that for the upcoming recruitment year it was possible that even if Convocation accepted the fall recruitment model in principle, it might implement this option for one year for timing reasons.

20. By permitting Toronto firms to interview students who have out of province offers, the special exemptions option deals with the concern that some students may take a U.S. or other out of province offer because they are uncertain of their chances with Toronto firms. Under this option, if students with an out of province offer wish to be considered for positions in Toronto, they may apply to the Law Society for a special exemption to meet with Toronto firms. A benefit of this option is that the number of students applying for exemptions can be monitored and follow-up can be undertaken to determine the effect of special exemptions.

21. As discussed by the working group the disadvantages of this option are that

    a) it separates out from the overall student body a small group of students who may have early interviews with Toronto firms;
    b) it does not allow Toronto firms to recruit generally, only to respond to students with out of province offers; and
    c) it may encourage students with little or no interest in U.S. firms to apply to them in the hopes of being able to interview with a Toronto firm. The unexpected result of this could be more students going out of province, particularly to the U.S.

22. The Committee is also concerned that even with the special exemptions option there is potential for there to be a significant disruption of the law school teaching schedule, depending upon the number of students involved, because Toronto law firms might set aside a number of days during the fall teaching term to interview the specially exempted students.

---

[4]The Executive Director of the Nova Scotia Barrister's Society, Darrel I. Pink, has expressed concern that any consideration of changes to Ontario's recruitment rules not ignore the "ripple effect" of Ontario's decisions on students in law schools across the country who seek to return to Ontario following graduation.

23. The Committee is fully aware that no matter how the problem is addressed a perfect solution is difficult to find. It is also aware of the fact that timing difficulties make the fall recruitment option difficult if not impossible to implement for the next recruitment process in any event.

24. Keeping in mind the factors set out in paragraph 14 above the Committee recommends that Convocation adopt the following with respect to summer student recruitment in 1999:

a. subject to (b), summer student recruitment by Toronto firms in 1999 shall continue to be conducted in February in accordance with the current summer student recruitment procedures;

b. a special exemption shall be available to permit students with out of province offers to engage in recruitment activity with Toronto firms in the fall. Students with out of province offers who wish to engage in recruitment activity with Toronto firms prior to February must apply to the Law Society of Upper Canada with appropriate evidence of their offer to receive a special exemption letter.

c. Interview and offer procedures will proceed as follows:

i) special exemption interviews shall not be conducted prior to 8:00 a.m. on Saturday, November 7, 1998.

ii) No communication of offers of employment or the intention to make such offers shall be made prior to 4:00 p.m. on Tuesday, November 10, 1998.

iii) Any offers made on Tuesday, November 10, 1998 must be left open until Wednesday, November 11, 1998 at 5:00 p.m. Offers made Wednesday, November 11, 1998 must be left open until 5:00 p.m. on Thursday, November 12, 1998. Offers made on or after Thursday, November 12, 1998 must be left open for a reasonable period of time.

iv) firms engaging in special exemption recruitment shall be restricted to hiring not more than the equivalent of 20% of their previous year's articling complement from among students with special exemptions to ensure that a number of summer positions that may become articling positions will remain open to students participating in the recruitment process in February.

25. Taking this approach

a) addresses the concern of the law firms that they have no access to students being attracted by out of province offers;

b) recognizes that, other than the status quo this is, in all likelihood, the most workable option for the upcoming year because of timing;

c) minimizes disruption to law school education and students, because interviewing commences on a Saturday with no offers to be made until Tuesday, thus focusing the interviews on only two teaching days;[5]

d) is an interim measure for one year to provide an opportunity to monitor the changes to the process and their impact, and the views of the various interested parties. Such evaluation should take place immediately following the February recruitment period, so that the matter can be addressed in a timely fashion.

---

[5]The Committee has considered that recruiting on the weekend has the potential to affect Sabbath observances, however, this is dealt with by there being two additional days for interviews during the week, and a prohibition against making offers of employment until the conclusion of the fourth day of interviews, so that no one is advantaged by the day upon which they are interviewed.

26. The Committee recognizes that there are logistical difficulties for the law firms having part of the recruitment process during a weekend, including arranging for security in their office buildings, but considers that, nonetheless, this approach best balances the interests of the various constituencies.

Request to Convocation

27. The Committee requests that

a) Convocation consider this report and the options provided by the working group in its paper at Tab 6; and

b) Convocation consider whether it will approve the Admission and Equity Committee's proposal set out in paragraph 24 above or another option.

50% LIMIT ON RECRUITING SUMMER STUDENTS AS ARTICLING STUDENTS

1. The establishment of the "50% guideline" to be observed by firms when hiring back summer students as articling students was recommended in the December 21, 1988 report of the *Subcommittee on the Summer Student Program* chaired by Donald H.L. Lamont, Q.C. Convocation adopted this report and its recommendations in 1989.

2. Specifically, the guideline asks firms with more than five articling students to either restrict the number of their summer students hired back as articling students to approximately 50% of the number of articling students employed by the firm in the previous year, or to restrict the number of summer students hired to approximately 50% of the number of articling students the firm employed in the previous year. The guideline is not currently a mandatory requirement.

3. At its June 1, 1998 meeting, while discussing the proposed summer student recruitment procedures for 1999, the Admissions & Equity Committee indicated its concern that the 50% guideline is not being observed.

4. The Admissions & Equity Committee believes it is necessary to a fair and equitable articling recruitment program that the terms reflected in the guideline be observed. Otherwise the summer student recruitment process becomes a means by which the articling recruitment process can be undermined and the many students not participating in the summer employment program may be at a disadvantage. The Committee is of the view that in order to ensure that the terms of the guideline are followed those terms should become part of the *Procedures Governing the Recruitment of Articling Students,* compliance with which is required by Rule 13(7) of the *Rules of Professional Conduct.*

5. This amendment would become effective for the recruitment of articling students that takes place in 1999 and thereafter.

Request to Convocation

6. Convocation is requested to approve the following:

> That the procedures that will govern the articling recruitment conducted in the summer of 1999 incorporate the terms of the "50% guideline" such that firms with more than five articling students be required to either restrict the number of their summer students hired back as articling students to approximately 50% of the number of articling students employed by the firm in the previous year, or to restrict the number of summer students hired to approximately 50% of the number of articling students the firm employed in the previous year.

Bar Admission Reform Report (June 1998)

Mr. Epstein presented the Bar Admission Reform Report for Convocation's consideration on whether to abolish the teaching program or turn to self-study licensing examinations.

Report to Convocation
June 11, 1998

Bar Admission Reform Report (June 1998)

Purpose of Report: Decision Making

TABLE OF CONTENTS

PURPOSE OF THIS REPORT

1. On February 27, 1998, Convocation approved a report entitled "Bar Admission Course Reform Discussion Paper" for the purpose of consultation with the profession, law students, and other interested persons. Consultation and study have been ongoing.

2. This Report is in the form of an options paper, including analysis, as required by the Governance Policies approved by Convocation on June 13, 1996. Members of Convocation, following approval of the Discussion Paper in February, also requested that Convocation be provided with an options paper so as to be more effectively equipped to determine the future of bar admission in Ontario.

3. This Report has been prepared so that Convocation can provide direction as to which fundamental options the Admissions and Equity Committee should continue to develop. With Convocation's direction, the Committee will be able to report to Convocation in the fall of 1998, presenting a fully-developed proposal for Convocation's consideration and decision.

LAW SOCIETY MANDATE

LEGISLATION

4. Section 60(1) of the *Law Society Act* states that the "...Society may maintain the Bar Admission Course...". Regulation 708, section 23(1) states that the "Society shall conduct the Bar Admission Course", and section 23(5) specifically mandates the current structure of the course, including articling.

MISSION STATEMENT

5. The Society, at page II of its December 1997 publication, *Governing in the Public Interest,* describes its mission, incorporating the mission statement, as follows:

The Law Society Act grants the Society the authority to educate, license, supervise and discipline Ontario's lawyers — a responsibility it discharges squarely in the public interest. The Society is specifically guided in its commitment to advance the interests of the public by its mission statement, which reads:

> *The Law Society of Upper Canada exists to govern the legal profession in the public interest — by ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct, and by upholding the independence, integrity and honour of the legal profession — for the purpose of advancing the cause of justice and the rule of law.*

Serving the public interest, and ensuring consumers are served by a competent and professional bar, are at the forefront of every activity the Society carries out...

More than powerful language, the mission statement serves as a practical guidepost for the Society against which it can measure the results of its activities and decisions.

The privilege of self-governance is granted on the assurance that the Society's obligation will be discharged in the interests of the greater community. Self-regulation was extended to lawyers because of the importance attached to having a legal profession capable of advocating for the rights and liberties of clients, free from undue government interference. Moreover, self-governance is rooted in the understanding that members of a profession, as custodians of a discrete body of knowledge, are in the best position to regulate themselves.

6. The process of admitting new members falls squarely within the Society's mission.

THE COMPETENT LAWYER

7. On November 28, 1997, Convocation approved the *Final Report of the Competence Task Force*, including the following working definition of the "competent lawyer":

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 practises;*

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:*

- *d. legal research,*
- *e. analysis,*
- *f. application of the law to the relevant facts,*
- *g. writing and drafting,*
- *h. negotiation,*
- *i. alternative dispute resolution,*
- *j. advocacy, and*

k. 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.

8. Convocation also directed that the definition underlie "the competence related work in which the Law Society engages."

9. By adopting the *Final Report of the Competence Task Force*, Convocation has reaffirmed and particularized the Society's commitment to ensuring competent legal services for the public.

10. In May 1998, the Professional Development and Competence Committee initiated an important program for Benchers to begin to develop a framework for the Society's role in competence. The bar admission process is a fundamental component of the Society's overall role in competence.

DESCRIPTION OF THE BAR ADMISSION COURSE

11. The Bar Admission Course began in 1959, and its current form was mandated by Convocation in May 1988, approving what has become known as the "Spence Report". The Bar Admission Course is offered in Toronto, Ottawa and London, and in Ottawa is provided in both French and English.

PHASE ONE

12. Phase One of the course is an introduction to the development of competent practice. The goal is to introduce students to key practice skills and to provide them with the opportunity to practise those skills in a workshop-like environment. Unlike Phase Three, Phase One does not emphasise knowledge of procedural and substantive law. The course is delivered in six units: professional responsibility and practice management, interviewing, legal research, legal writing and drafting, alternative dispute resolution and advocacy. Phase One is a one-month program, offered twice annually in May and June. Attendance is mandatory. Twenty students are allocated to each seminar group and remain with their group throughout Phase One.

ARTICLING (PHASE TWO)

13. Phase Two is the articling year. Articling dates from before 1800, therefore significantly pre-dating the 1959 beginning of the Bar Admission Course. Articling, in its current, more regulated form, was mandated by Convocation in October of 1990. Lawyers supervising students must be approved as articling principals, based upon prescribed criteria in the areas of experience, competence and ethical standards. Principals file an articling education plan setting out the experience the student will receive during the articling year. The education plan describes how the placement meets the Society's requirements for an articling position and provides a basis for evaluating the articling experience.

14. Students under articles complete a Professional Responsibility examination during the articling year. The examination is reviewed with the student by the principal using a marking guide provided by the Law Society. The examination tests the students' ability to apply practically the *Rules of Professional Conduct.*

15. The articling term is evaluated by both students and principals by way of a mid-term evaluation. Students also submit an end-of-term evaluation. These documents serve as a barometer of the experience received by articling students and, at the mid-point of articles, underscore areas of weakness in experience that need to be addressed in the remaining articling period.

16. For more detailed information on articling, including the very positive evaluations it receives, see Appendix I.

PHASE THREE

17. Phase Three is offered once each year following articling (Phase Two). Prerequisites are successful completion of both Phases One and Two (articling) of the Bar Admission Course. It traditionally commences at the beginning of September, and concludes in mid-December. Attendance at the seminars is strongly encouraged, but no longer mandatory. Students complete seminar course work and assignments in addition to being required to pass written examinations in each subject. To assist students, the Bar Admission Course provides Reference Materials. Computer-assisted instruction is available in basic tax law and in law practice accounting.

18. Phase Three course instruction is delivered by practising lawyers who volunteer to teach part-time in their particular areas of practice. Students are allocated to seminar groups of approximately 20 students. The groups remain constant for the duration of Phase Three. Many classroom exercises and assignments are used to simulate practice. They allow the students to learn substantive and procedural law, lawyering skills, and how to complete transactions.

19. The eight subject areas offered in Phase Three are the following:
    a. Business Law, including corporate, commercial, related tax, related creditor and debtor remedies, basic securities, professional responsibility, and practice management;
    b. Civil Litigation, including alternative dispute resolution, evidence, related creditor and debtor remedies, professional responsibility, and practice management;
    c. Criminal Procedure, including evidence, professional responsibility and practice management;
    d. Estate Planning and Administration, including will drafting, related tax, professional responsibility, and practice management;
    e. Family Law, including evidence, related tax, related creditor and debtor remedies, professional responsibility, and practice management;
    f. Professional Responsibility and Practice Management, including risk management and the application of the Rules of Professional Conduct;
    g. Public Law, including preparation for an appearance before administrative tribunals, evidence, professional responsibility, and practice management;
    h. Real Estate, including related tax, related creditor and debtor remedies, professional responsibility, and practice management.

OTHER JURISDICTIONS

OTHER CANADIAN JURISDICTIONS

20. Although the approach to bar admission is similar in all Canadian jurisdictions, the timing and scheduling of the bar admission instructional programs, articling and testing vary in their detail from jurisdiction to jurisdiction. (See Appendix II.)

OTHER COMMONWEALTH COUNTRIES

21. The same can be generally said for other Commonwealth countries. (See Appendix III.) For example, New South Wales has recently reinstated an articling equivalent while reducing the length of its bar admission teaching program. Some Commonwealth jurisdictions, such as New Zealand, have a mandatory term of post-admission supervised law practice rather than articling.

UNITED STATES

22. The model for bar admission in the United States is a law degree followed by a series of bar examinations. There is no equivalent to articling, except for modest clerkship requirements in Delaware and Vermont. There are no bar admission courses at all, except for intense and expensive examination preparation courses marketed by commercial providers and, in 25 states and the District of Columbia, mandatory bridge-the-gap programs, which are in the nature of a credit hours continuing legal education requirement for newly admitted lawyers (typically between a few hours and three days). (See Appendix IV.) The bridge-the-gap programs do not test attendees to determine what is actually learned.

23. The legal profession in the United States has been very critical of the inadequacy of the American continuum of legal education, including the bar admission process. Consequently, the American Bar Association commissioned a Task Force, which in 1992 published a landmark study on the nature of American legal education. The Report, entitled *Legal Education and Professional Development - An Educational Continuum*, also known as the *MacCrate Report*, recommends significant change, including an emphasis on lawyering skills and professional values in the system of professional legal qualification and education. Very pointedly, the *MacCrate Report* criticizes the lack of an effective continuum in American pre and post-call legal education, with one key focus being on eliminating the gap between law school graduation and admission to the bar. The Report goes on to acknowledge the superiority of Commonwealth programs, including Ontario's. (See Appendix V.) A leading American commentator expresses the following conclusion about the American bar admission process: "Therefore, if we wish our new lawyers to possess professional skills greater than is now the case, those skills will have to be taught and tested, as is the case in Canada, after law school but prior to admission. Ontario and other Canadian provinces have demonstrated that large numbers of students can be taught skills in well designed pre-admission courses." [1]

WHERE TO GO FROM HERE: SOME IMPORTANT FACTORS

24. For all of the options being presented to Convocation, there are number of factors that must be accounted for, including the following. This Report does not specifically put these factors in issue.

DEFINITION OF COMPETENT LAWYER

25. In May 1988, Convocation approved the following objective for the Bar Admission Course:

> *To ensure, to the extent that education can do so, that lawyers called to the bar and admitted as solicitors in Ontario are equipped with the skills, knowledge and sense of professional responsibility and purpose that would be required to see them through the initial three years of practice in a style that would assure not only appropriate service of clients' interests but also a steady, constructive growth of their own professional character and lawyering capacity.*

---

[1] D. Roche, "Practice Skills Teaching and Testing as Part of the Bar Admissions Process" in *The Bar Leader* (Feb. 1995), at p. 33.

26. The definition of the "competent lawyer" approved by Convocation on November 28, 1997 (paragraph 7 above) and the Society's mission statement (paragraph 5 above) provide the fundamental basis for assessing the appropriateness of any proposed direction for the bar admission process.

LAW SCHOOL ROLE

27. Section 23(9)(a) of Regulation 708 provides Convocation with authority to approve law school programs for purposes of admission to the Ontario bar. Convocation has approved the six Ontario common law LL.B. programs and the 10 common law LL.B. programs situated in other provinces.

28. The most recent agreement with Ontario law schools as to requirements for approval of the LL.B. degree was in 1957. Essentially the agreement calls for the three-year (six-semester) LL.B. program, including the following mandatory courses for all students: civil procedure, criminal law and procedure, Canadian constitutional law, contracts, torts, personal property, and real property. Some law schools have a small number of additional mandatory courses, although law school curricula comprise, for the most part, optional courses in the second and third years of study.

29. To assist in the identification of the gap that exists between graduation from law school and admission to the bar, a random survey has been completed of the transcripts of 302 students from the 1997 graduating class who will enter Phase Three in the fall of 1998. The survey has been conducted to determine what courses, other than those mandated by the 1957 agreement, are most often taken by students, and the number of students who take those courses.

30. The courses in which 50% or more of the students surveyed enrolled is set out below:

a.	Osgoode	Evidence	95.0%
		Taxation Law	93.3%
		Administrative Law	85.0%
		Business Associations	80.0%
		Real Estate Transactions	76.7%
		Family Law	76.7%
		Commercial Law	73.3%
		Trusts	70.0%
		Estates	53.3%
		Securities Regulation	51.7%
		Criminal Procedure	51.7%
		Labour Relations	50.0%
b.	Ottawa University English:	Evidence	72.0%
		Administrative Law	56.0%
		Business Associations	56.0%
		Taxation	52.0%
		Trusts	52.0%

	Ottawa University French:	Droit Administratif	95.0%
		Tribunal - Ecole	89.0%
		Droit de la Famille	84.0%
		Droit Fiscal	84.0%
		La Preuve	84.0%
		Droit des Societies	79.0%
		Droit Commercial	68.0%
		Les Recours Juridiques	63.0%
		Droit de l'Assurance	58.0%
		Droit du Travail	58.0%
		Droit des Creances	53.0%
		La Fiducie	53.0%
c.	Queen's University	Evidence	100%
		Family Law I	95.2%
		Criminal Procedure	90.5%
		Business Associations	90.5%
		Taxation	90.5%
		Administrative Law I	85.7%
		Remedies	80.9%
		Wills & Trusts	52.4%
d.	University of Toronto	Business Organizations	97.5%
		Business Organizations II	62.5%
		Evidence	95.0%
		Administrative Law	92.0%
		Trusts	90.0%
		Income Tax	87.5%
		Family Law	75.0%
		Secured Transactions & Insolvency	62.5%
		Directed Research	57.5%
		Labour Law	55.0%
		Wills & Estate Planning	52.5%
e.	University of Western Ontario	Administrative Law	100%
		Company Law	100%
		Evidence	100%
		Income Tax	100%
		Trusts	100%
		Family Law	86.1%
		Commercial Law	84.6%
		Labour Law	70.7%
		Real Estate Transactions	69.2%
		Litigation Practice	52.3%

f.	University of Windsor	Evidence	89.4%
		Income Tax	82.9%
		Commercial Law	76.6%
		Family Law	76.6%
		Transfer of Land	72.3%
		Criminal Procedure	70.2%
		Judicial Review - Admin.	59.5%

31. It has been an area of common understanding between the law schools and the Law Society that law schools are to provide students with a sound, reasoned and critical approach to current substantive law, as well as an understanding and critical appreciation of how the law and legal system function, and to develop in students the skills, in particular, of legal research and analysis, legal reasoning and legal writing. The law schools also provide students with the opportunity to acquire practice oriented skills, through trial and appellate advocacy courses, alternative dispute resolution courses and clinical experience, among others. While law schools provide a foundation for those students who intend to move on to the bar admission process, the law schools do not see themselves as being uniquely responsible for preparing students for the Bar Admission Course or the provision of legal services.

32. Accordingly, an effective bar admission process must fill the competence gap between graduation from law school and admission to the bar.

33. There is no doubt that filling the competence gap in such a short period of time represents one of the most significant challenges in developing an effective bar admission process. Recommendation 1 in the report of the *Task Force on Examination Performance*[2] reads as follows: *The continuum of legal education should be rationalized so that law school and Law Society goals, processes and approaches are in harmony.*

EXAMINATION REQUIREMENT

34. The Society's responsibility to the public requires an effective system for assessing student competence.

35. Any option for a bar admission process should include a requirement that students pass licensing examinations, skills assessments and other tests of their entry-level lawyering competence as a prerequisite to being licensed to practise law.

36. Further study of the student assessment process is required, and detailed proposals will be included in the report to Convocation in the fall of 1998. Throughout the history of the Bar Admission Course, the examination system has continued to be a focus of concern. In this respect, the Ontario Bar Admission Course is not unique. The effectiveness of the examination system is under continuing scrutiny in the United States, with the multiple choice format multi-state bar examination and local state bar examinations being increasingly supplemented by performance testing.

---

[2] In September 1997, Convocation established the Task Force, chaired by Bencher Nancy Backhouse, to investigate the performance of Aboriginal and visible minority students in the Bar Admission Course, to report on the results of the investigation, and to recommend options on how to address the issues.

A GENERAL LICENSE

37. Because the practice of law has become increasingly complex and the demand for specialized legal services has increased, there have been suggestions that the Society should introduce limited licensing. A newly called lawyer would be permitted to qualify within a defined practice area, rather than being required to qualify as a generalist. (Note that this issue deals with limited licensing at the entry level, not the certification of specialists.)

38. Students and lawyers transferring from other jurisdictions often speak in favour of a limited licensing approach. It does not appear that there would be a danger to the public if lawyers could elect to limit their practice to certain subject areas, if the public is informed that the lawyer's license is so limited. It would be necessary for the Law Society to develop a limited licensing process, and to monitor the limited licensing effectively. (Some lawyers currently limit their practices to criminal or immigration work, and thereby benefit from a lower insurance premium.)

39. Although Convocation may wish to direct that, in the future, limited licensing be explored by the Admissions and Equity Committee, limited licensing has not formed part of the study of the Working Group.

40. Moreover, it does not appear that the *Law Society Act* and Regulations permit the granting of limited licenses. (However, section 23(8) to Regulation 708 does provide the Admissions and Equity Committee with the authority under exceptional circumstances to modify the normal requirements of the Bar Admission Course, and therefore the Committee could apply this authority to admit new members to the bar or accepting an undertaking to limit their practice in a specific way).

FRENCH AND ENGLISH CONTENT

41. The Admissions and Equity Committee has continued to proceed on the assumption that the bar admission process will be available in French and English, and that any options adopted by Convocation include the continuation of both the French and English streams. (Note that the French language program is considerably more expensive, on a per student basis, than the English language program.)

42. The Committee is indebted to the *Advisory Committee on the French Bar Admission Course*, chaired by Bencher Bradley Wright, for the important work that it has done in advising the Society on the enhancement of the French language bar admission process.

EQUITY IN THE PROFESSION

43. In May 1997, the Bicentennial meeting of Convocation approved the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*, thereby affirming the Society's dedication to achieving equity and diversity in the legal profession.

44. More recently, the report of the *Task Force on Examination Performance*, while being concerned that the bar admission process presents obstacles for some groups who are under-represented in the profession, provides important guidance in setting the future direction of the bar admission process.

45. The Task Force (see Appendix VI) includes in recommendations 12 through 20 important recommendations as to how the bar admission process can be more effective in producing qualified lawyers who reflect the diversity of members of the public they are to serve. The Task Force recommends, *inter alia*, an effective bar admission instructional and testing program as a means to advancing equity in the bar admission process.

GEOGRAPHIC ACCESS

46. A little more than two decades ago, the Law Society required all candidates for admission to the bar both to attend the Bar Admission Course and write the examinations in Toronto. While this requirement undoubtedly worked some injustice even at that time, the increasing diversity of the student body calls for effective geographic access to the bar admission process.

47. It is therefore fundamental to all of the options listed in this report that the bar admission process be reasonably available and accessible geographically, and that there be ongoing work to expand access through electronic media. Increasing use of computer technology by students and lawyers provides expanded opportunities to deliver bar admission education while reducing dislocation for students. In this respect, the *Lawyers Workbench* proposal offers great potential for legal education.

48. Expanding availability to new locations inevitably involves increased expense. Therefore each proposal to expand to a new site must be assessed in the context of the number of students who would benefit and the cost.

FUNDING

49. Only following detailed development of the model of bar admission program will it be possible to develop a full budget.

50. The budget and funding of the Bar Admission Course are of concern, particularly given Law Foundation grant reductions. The Bar Admission Course, including articling, has traditionally been fully funded by student tuition and the Law Foundation. Unlike in most provinces, the annual fees for the profession do not include any amount to support the Bar Admission Course.

51. Teaching skills and transactions effectively requires small class sizes, a proportionately greater number of instructors, and more teaching space. Therefore, the current Bar Admission Course generally operates in seminar rooms with classes of no more than 20 students. The predecessor model of Bar Admission Course, which ceased operation in 1990, was able to run with larger class sizes because of the predominance of the lecture method, and the lesser need for interaction between students and instructors. The move in 1990 to the current model of Bar Admission Course therefore called for an increased Bar Admission Course budget, together with increased numbers of instructors and more seminar room teaching space. Even with this expansion, the Bar Admission Course student to instructor ratio of 20:1 is significantly higher than in typical continuing legal education skills programs. (For example, the Ontario Centre for Advocacy training typically limits the class size to eight students to one or two instructors, enabling the instructors to provide effective feedback on lawyering skills.) To continue teaching essential lawyering skills and transactions in the classroom, there must be adequate funding and other resources.

52. Although costs must be kept down, the Society's mandate does not permit compromising the competence level of newly called lawyers.[3] While recognizing that the bulk of costs will continue to be covered, and perhaps increasingly covered by student tuition, it is important, particularly in these times of dramatically rising law school tuition levels, that tuition not be an unreasonable barrier to access to the bar. It is essential therefore to confine any tuition increases as much as reasonably possible and have in place effective student loan and bursary programs. The ongoing contribution of the Law Foundation continues to be very much appreciated by the Law Society and students.

---

[3] Some ask if eliminating the Bar Admission Course would be financially advantageous to the Society. The Bar Admission Course pays in excess of one million dollars per year from tuition and the Law Foundation grant to the Law Society General Fund for a number of items, most notably for teaching and administrative space, maintenance, security, computer support services, human resource services, printing and food services. Would commercial tenants occupying the teaching and administrative space generate increased rental revenue for the Society? Convocation may wish to consider whether this ought properly to be a factor in determining the Society's role in fulfilling its mission.

53. Moreover, Convocation will want to consider enhancing the Society's student financial assistance programs as student debt loads increase due to rapidly rising law school tuition.

THE PROFESSION'S NON-PECUNIARY CONTRIBUTION

54. Ontario is fortunate that it has the active working contribution of so many members of the profession in the bar admission program. Indeed, the profession's support should not be underestimated. Almost one thousand lawyers each year volunteer many hours to teaching and examining in the Bar Admission Course. (Members of the practising bar are exclusively responsible for grading and re-grading more than 7,200 examination papers each fall, in addition to three sets of supplemental examinations). The profession's contribution is one aspect of Ontario's legal culture that must be considered a precious resource, and which represents the finest in professionalism.

55. It is therefore important that the process of bar admission reform involve continuing consultation with, participation of, and respect for the experience and views of the dedicated members who contribute so much to the Society's Bar Admission Course. These members overwhelmingly endorse the continuation and enhancement of a bar admission teaching program that emphasises substantive and procedural law, skills and the how-to of lawyering. (For a summary of consultation meetings with Section Heads and Senior Instructors, see Appendix VI).

TIMING FOR IMPLEMENTATION

56. The timing for implementing any fundamental change to the bar admission process must depend on the nature of the new process and the necessity for students who are now in law school to be able to adapt to any significant change.

57. Students who have just completed the second year of law school, and who will graduate from law school in 1999, have made commitments to article in the 1999-2000 articling term, after completion of Phase One of the Bar Admission Course in May or June of 1999 and before entering Phase Three of the Bar Admission Course in September 2000. This group must therefore remain in the current Bar Admission Course system. Depending on the extent of any change to the bar admission process, it may be possible for students who have just completed the first year of law school studies, and who will graduate in the year 2000, to begin a new bar admission process then. Whether this is feasible depends on the direction for the bar admission process to be set by Convocation in the fall of 1998.

58. It should also be noted that a legislative change would be required to section 23(5) of Regulation 708, which now specifically prescribes the current model of Bar Admission Course.

THE FUNDAMENTAL DECISION FOR CONVOCATION

59. The fundamental decision for Convocation is whether the Law Society, in the context of its mandate to ensure, in the public interest, that Ontarians are *served by lawyers who meet high standards of learning, competence and professional conduct*, will require law school graduates seeking admission to the practice of law to satisfactorily complete a bar admission education, training and testing program, or simply a series of self-study licensing examinations.

60. With Convocation's decision, the Admissions and Equity Committee will then be able to prepare, for the fall of 1998, a fully developed proposal for a bar admission process for Convocation's consideration and decision.

OPTION 1: BAR ADMISSION PROGRAM ALTERNATIVES

61. Convocation is being asked to choose, firstly, between a comprehensive and effective bar admission education and training program, and, secondly, a self-study licensing examination system.

Option 1(a) - Bar Admission Education and Training Program

62. *Recommendation: The Admissions and Equity Committee recommends that there be an effective and comprehensive bar admission education and training program that law school graduates be required to complete successfully as a pre-requisite to admission to the bar.*

63. *Advantages:*

- endeavours to fill the competence gap that exists between law school and admission to the bar, as for example currently exists in the United States
- as a pre-requisite to articling, prepares students for articling
- can teach knowledge of law and procedure[4], skills, professional responsibility, loss prevention and risk management and, in combination, the how-to of the practice of law
- a formative stage in socializing law students to their role in the profession and their responsibility to the public, the profession and the administration of justice
- particularly helpful to the newly called sole and small firm practitioner

64. *Disadvantages:*

- in most cases, this is a lengthier system than a self-study licensing examination process
- more expensive to the individual student than a self-study licensing examination program, although government-sponsored student financial aid is not presently available for self-study programs
- some redundancy for those students who have extensive summer law firm experience or who are employed in large law firms where there are intensive education and mentoring programs

65. With Convocation's direction to further develop and report on proposals for a bar admission education and training program, the Committee would consider who would provide the program, the program design and reduction of geographic barriers.

Who would be the program provider?

66. If Convocation supports the ongoing existence of an effective bar admission education and training program, then the Admissions and Equity Committee would develop a detailed proposal and options on who would be the program provider.

67. One option would be for the Law Society to continue providing the bar admission program, although, if feasible, it would be provided on each of the six Ontario law school premises, with the Law Society as a tenant, perhaps sharing some administrative and student support services. Such an arrangement would be contingent on availability of space at each of the law schools, and entering into an acceptable arrangement with each of the law schools.

---

[4] Neil Gold, in "A Commitment to Quality: Managing Risk While Improving Client Service and Satisfaction (A Report to the Lawyer's Professional Indemnity Company on Identifying and Treating the Underlying Causes of Claims Against Lawyers)" May 4, 1997, reports at page 47: "It is routinely said that negligence claims do not arise out of ignorance of the law. Interview data would seem to suggest otherwise in reasonably large numbers of cases. About 20% of the insureds interviewed mentioned that knowledge of the law was an issue for them."

68. As a second option, the Law Society could endeavour to arrange with each of the six law schools for delivery and local administration of the program by the law school itself. The program being delivered would continue to be the program designed and approved by the Law Society, but the Law Society would divest itself in each location of the responsibility for program delivery and local administration.

69. As a third option, the Law Society could explore the setting up of a separate entity (as the Society did when L.P.I.C. was created). The Western Canadian experience is instructional. In each of Alberta, British Columbia and Saskatchewan, the Law Society and provincial branches of the Canadian Bar Association, together with the provincial law schools, have set up a semi-autonomous organization to, among other things, design, deliver and administer the bar admission teaching and testing program (the Legal Education Society of Alberta, the Continuing Legal Education Society of British Columbia, the Saskatchewan Legal Education Society Inc.). These organizations have their own Boards, premises and staff, and are also responsible for continuing legal education. Members of the Board are appointed by the respective law societies and the other sponsors. As such, the respective law societies have, to a significant extent, divested themselves of the lion's share of responsibility for bar admission.

70. As a fourth option, the Society could potentially divest itself even more substantially of the responsibility for the bar admission program by developing a system that exists in some other jurisdictions, such as England and Wales and New South Wales. In these jurisdictions, the Law Society publishes the criteria upon which it bases its consideration of applications from universities wishing to provide a bar admission program. A bar admission program proposal is submitted by individual law schools or colleges of law, based on criteria set and published by the Law Society, and the application is considered by the Law Society. On approval, the Law Society continues to monitor the effectiveness of each individual bar admission program, although subject to complying with the published criteria, the individual bar admission programs are independent, and vary from institution to institution. Advantages include divesting the Society of exclusive responsibility for delivering the bar admission program, encouraging innovation and variety in bar admission programs (subject to Law Society quality control), encouraging integration of law school academic programs with professional preparation, and permitting competition among providers (which should promote quality).

Design of the program model

71. The Admissions and Equity Committee proposes to carry on in its work to develop, for its fall 1998 report, a detailed proposal for the model of bar admission education and training program, with the goal of producing a program that would be as effective, accessible and affordable as reasonably possible. To date, the Committee has considered in varying detail a number of possibilities, including those listed below.

72. The *Bar Admission Course Reform: Discussion Paper* presented to Convocation on February 27, 1998, proposes a new model which, following law school, would replace the current program with a 12-week summer school program, and which would in turn be followed by the articling year. Key components of the proposal are that the Society would endeavour to locate the program in each of the Ontario law school locations, if possible within the law school facilities, and that there would be a major emphasis on professional responsibility, risk management, practice management, and lawyering skills. In continuing to develop this option, the Admissions and Equity Committee would take into account the recommendations of the *Task Force on Examination Performance* relating to Bar Admission Course Reform. Recommendation 12 of the Task Force Report sets conditions for the approach to Bar Admission Course Reform: *Any changes to the B.A.C. must take into account the diversity of the student body and the impact of changes on students from groups currently under-represented in the legal profession.*

73. The Committee has also considered carrying on with the current bar admission program, and introducing important new enhancements. The current program has the advantage of providing sound coverage in lawyering skills, substantive law, procedure, professional responsibility and practice management. The substantive law areas currently covered in Phase Three deal with all but one of the substantive law areas in which the greatest number of Law Society members spend their practice time[5]. The program builds on the experience in articling and introduces a solid element of quality control that does not always exist in articling.

74. There are other potential models, including the following that Committee could consider:
   a. Any of the programs provided in other Canadian jurisdictions or Commonwealth countries. (See Appendices II and III).
   b. The model proposed, but not followed up on, by the Bar Admission Course Review Subcommittee in its Report presented to Convocation and approved by Convocation for purposes of consultation on April 28, 1995. (See Appendix VIII.)
   c. A longer program that could be designed to take more time to provide effective preparation to practise law competently, while reducing the examination cramming atmosphere in Phase Three of the current course. (This proposal is endorsed by some of the Bar Admission Course Heads of Sections).
   d. A program that provides a series of optional qualification examinations, exempting students from those areas in which the student succeeds in the qualification examinations.

Reduce Geographic Barriers

75. Location of a bar admission program, whether geographic or through electronic media, relates directly to access to entry to the profession. Availability of location is, as an access concern, distinct from identification of who might provide a bar admission program. The current Bar Admission Course is provided in Toronto, Ottawa and London, and as such can present a barrier to students who are forced to move to complete the legal qualification process. If the legal profession is to reflect the diversity of the public it serves, the Law Society should endeavour to minimize as much as reasonably possible barriers based on location. The goal of providing multiple locations for the delivery of the program may be achieved through appropriate technology (such as through video conferencing and computer technology), structured self and part-time study, and locations where student enrolment numbers warrant face-to-face delivery.

Option 1(b) - Self-study Licensing Examinations

76. The minimalist option would be to eliminate the teaching program entirely, and to replace it with a self-study licensing examination regime. (This option could include articling as we currently know it, although the American experience, much criticized from within the United States, does not generally include articling).

---

[5]The Department of Audit and Investigation - Forms Services of the Law Society of Upper Canada annually collects statistics from its members. The following 1997 data collected from 23,178 Law Society members indicates the main practice areas where the members spend at least some of their practice time. All of the areas but employment and labour law are covered in Phase Three.

Area of Practice	Number of Lawyers Practising in Area	Percentage of Lawyers
Administrative Law	6,452	27.84%
Civil Litigation	10,383	40.53%
Corp. Commercial Law	11,289	44.43%
Criminal/Quasi Criminal Law	4,847	20.36%
Employment & Labour Law	6,111	22.95%
Family Law	4,965	22.35%
Real Estate Law	7,338	32.68%
Wills and Estates Law	7,486	32.03%

77. *Advantages:*

- for successful students, a quicker process and self-paced
- lower cost option for Law Society
- likely lower cost for students

78. *Disadvantages:*

- creates a competence void in preparation for professional competence: no professional education or training program to fill the gap between law school and admission to the bar
- self-study examinations would likely lead, as in the United States, to expensive examination preparation schools being set up by for-profit commercial providers. Students in such schools would not be eligible for government sponsored student loans.
- because such a program is only for examination preparation purposes, it is wasteful of time and funds that could be usefully employed to prepare to be a competent lawyer
- because the focus is on effective cramming for licensing examinations, little of lasting value is taught
- a self-study program combined with rigorous licensing examinations would be likely, as can be seen in the American experience, to exacerbate the disadvantages that already concern students from groups under-represented in the profession. (See Recommendation 14 in the Report of the *Task Force on Examination Performance*, reproduced at Appendix VI, which reads as follows: *The program adopted by the Law Society under bar admission reform should include a meaningful teaching component to support students in meeting the requirements for call to the bar.)*

79. The Admissions and Equity Committee is unanimously of the view that the Law Society would be derelict in its responsibility to the public and its student members in creating a system of professional qualification that would be so inferior in meeting the competence needs of newly admitted lawyers. The Committee has considered whether by simply vacating the field of bar admission education and training, market pressures would compel the law schools to assume the role of professional preparation. The American experience already demonstrates that the law schools have not filled the competence gap in the legal education continuum, and there is no reason to believe that the experience would differ in Canada. The responsibility of the Law Society is to lead in the field of lawyering competence and not abandon entry-level legal education on a gamble that the law schools would eventually fill the competence gap. The Committee recognizes and fully expects that private providers would attempt to step in, but only to the extent that they could successfully market for-profit commercial programs that would assist students in preparing for examinations. While such programs, according to the American experience, would very likely be effective in preparing students to pass examinations, their goal is not to prepare students for the practice of law. Private for-profit examination preparation schools are not to be confused with effective professional legal education and training programs whose goal is to ensure competence in newly called lawyers, not just a passing score on licensing examinations.

OPTION 2: ARTICLING AND THE ALTERNATIVES

Option 2(a) - Articling

80. *Recommendation: The Admissions and Equity Committee recommends the continuation and enhancement of the articling program as an integral part of an effective professional education and training program.*

81. *Advantages:*

- provides the practical, supervised on the job experience component
- important in process of socializing new members to the profession
- much lower cost to Law Society than a substantial substitute classroom clinical experience

82. *Disadvantages:*

- uneven quality of experience from placement to placement
- no assessment of quality of student performance
- obtaining a position can pose a job market barrier not necessarily based on merit
- inequities of remuneration and other material benefits

83. New South Wales has returned to articling following a period of having replaced it with a sophisticated clinical classroom experience. Articling was re-introduced, not only to produce significant cost savings, but because it was recognized that the practical objectives of articling could not be sufficiently achieved in an institutionally based clinical classroom program. In short, it was recognized that a period of practical experience is necessary to prepare students to provide client services. It should also be noted that the Canadian Bar Association - Ontario Student Division, in early 1995, consulted with its student members on articling-related issues through meetings and a survey. There was a clear consensus among students that articling serves a useful and important function in legal education, and that it could be improved, but ought to be maintained.

84. The recommendation that Convocation continue the articling program as a component of the bar admission process includes ongoing enhancements to the program and measures to assist students to obtain quality articling placements.

Option 2(b) - Alternatives to Articling

85. There are some alternatives to articling in place in other jurisdictions, although after careful consideration, they are not endorsed by the Committee.

86. A requirement of supervised post-admission practice in the employment of an experienced member might be considered as a substitute for articling. For example, in New Zealand newly admitted solicitors are not entitled to practise alone before having completed three years of supervised legal experience. While the advantages might be seen as similar to articling, regulation of the quality of experience can be significantly more difficult. The greatest concern about this option, based on experience in other jurisdictions, is that the job market offers many less supervised positions than are needed, so that in very large numbers newly admitted lawyers are shut out of practising their profession.

87. Another alternative to articling would be a mandatory mentoring program that, for example, would pair each newly admitted lawyer with a mentor for a prescribed period of time. Mentors would be approved by the Society from a volunteer pool of experienced lawyers. The mentor would provide ongoing guidance, both on an on-call basis and on a regular meeting basis. The mentor's role would be to provide strategic advice, identify gaps in knowledge or skills, recommend education programs or self-study to close those gaps, and provide moral support to newly admitted lawyers. Disadvantages would include a likely difficulty in identifying and matching sufficient numbers of mentors, and considerably less educational structure than for articling.

IN CONCLUSION

88. There have been recent consultation meetings with Bar Admission Course Section Heads and Senior Instructors, students at the six Ontario law schools, and the C.B.A.O. Student Division. (See Appendices VI, VIII and IX respectively.)

89. Consistent themes in the consultations include support for a meaningful bar admission education and training program, as the most effective means to fill the competence gap between graduation from law school and admission to the bar. None of the constituencies consulted suggest standing still, and so the Admissions and Equity Committee recommends that Convocation direct it to carry on with its study and consultation and to report in the fall of 1998 with a detailed proposal for an effective and affordable bar admission education, training, articling and testing program.

90. While recognizing that Convocation is in the midst of setting its overall priorities, the direction that Convocation chooses for the future of the bar admission process must be one that is grounded in the Law Society's fulfilment of its paramount responsibility to the public to ensure that newly called lawyers are competent to provide effective legal services.

APPENDICES

A debate followed.

Convocation took a morning break at 11 :15 a.m. and the debate resumed at 11:30 a.m.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:50 P.M.

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

The Treasurer, Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Carey, Carter, R. Cass, Chahbar, Copeland, Cronk, Crowe, Curtis, DelZotto, Eberts, Epstein, Feinstein, Finkelstein, Gottlieb, Jarvis, Krishna, Lamek, Lawrence, Legge, MacKenzie, Marrocco, Martin, Millar, Murphy, Murray, Ortved, Puccini, Ruby, Sachs, Stomp (conference call), Swaye, Topp, Wardlaw, Wilson and Wright.

.....

.....

IN PUBLIC

.....

BAR ADMISSION REFORM REPORT (cont'd)

It was moved by Mr. Marrocco, seconded by Mr. Banack that given the expression of support for the continuation of the bar admission education program, the matter be deferred until alternative proposals are brought back before Convocation.

Lost

ROLL-CALL VOTE

Adams	Against
Angeles	Against
Armstrong	Against
Backhouse	Against
Banack	For
Carey	Against
Carter	Against
Chahbar	For
Copeland	Against
Cronk	Against
Crowe	For
Curtis	Against
DelZotto	Against
Eberts	Against
Epstein	Against
Feinstein	Against
Finkelstein	Against
Gottlieb	Against
Krishna	Against
Lamek	Against
Legge	Against
MacKenzie	Against
Marrocco	For
Martin	Against
Millar	Against
Murphy	Against
Murray	Against
Ortved	For
Puccini	Against
Ruby	Against
Sachs	Against
Stomp	Against
Swaye	Against
Topp	For
Wilson	For
Wright	Against

Vote 29 - 7

It was moved by Mr. Adams, seconded by Mr. Wilson that as a preliminary step before a decision is made about the potential redesign and delivery of a bar admission course the Education Department draft for the approval of Convocation a request for proposal to design evaluative instruments specifically linked to the competency criteria already approved by Convocation and that this request for proposal be published in the Ontario Reports, and distributed to the Ontario Institute of Studies in Education, the law schools and law firm education departments and private providers currently offering educational assistance programs.

Lost

ROLL-CALL VOTE

Adams	For
Angeles	Against
Armstrong	Against
Backhouse	Against
Banack	For
Carey	Against
Carter	Against
Chahbar	Against
Copeland	Against
Cronk	Against
Crowe	For
Curtis	Against
DelZotto	Against
Eberts	Against
Epstein	Against
Feinstein	Against
Finkelstein	Against
Gottlieb	Against
Krishna	Against
Lamek	Against
Legge	Against
MacKenzie	Against
Marrocco	For
Martin	Against
Millar	Against
Murphy	Against
Murray	Against
Ortved	For
Puccini	Against
Ruby	Against
Sachs	Against
Stomp	Against
Swaye	Against
Topp	For
Wilson	For
Wright	Against

Vote 29 - 7

It was moved by Mr. Epstein, seconded by Mr. Carter that the following recommendation set out on page 22 of the Report be adopted:

"That there be an effective and comprehensive bar admission education and training program that law school graduates be required to complete successfully as a pre-requisite to admission to the bar."

Carried

ROLL-CALL VOTE

Adams	For
Angeles	For
Armstrong	For
Backhouse	For
Banack	Against
Carey	For
Carter	For
Chahbar	For
Copeland	For
Cronk	For
Crowe	Against
Curtis	For
DelZotto	For
Eberts	Against
Epstein	For
Feinstein	For
Finkelstein	Against
Gottlieb	For
Krishna	For
Lamek	Against
Legge	For
MacKenzie	For
Marrocco	Against
Martin	For
Millar	For
Murphy	For
Murray	Against
Ortved	Against
Puccini	For
Ruby	For
Sachs	For
Stomp	Against
Swaye	For
Topp	Against
Wilson	Against
Wright	For

Vote 25 - 11

It was moved by Mr. Epstein, seconded by Mr. Carter that the articling component continue as part of the pre-call education program.

Carried

ROLL-CALL VOTE

Adams	For
Armstrong	For
Backhouse	For
Banack	Abstain
Carey	For
Carter	For
Chahbar	For
Cronk	For
Crowe	For
Curtis	Against
DelZotto	For
Epstein	For
Feinstein	For
Finkelstein	Abstain
Gottlieb	For
Krishna	For
Lamek	For
MacKenzie	For
Marrocco	For
Martin	For
Millar	For
Murphy	For
Murray	For
Ortved	Against
Puccini	For
Ruby	For
Sachs	For
Stomp	For
Swaye	For
Topp	For
Wilson	For
Wright	For

Vote 28 - 2 (2 Abstentions)

It was moved by Ms. Curtis, seconded by Mr. MacKenzie that the Epstein/Carter motion on the reaffirmation of the articling program be tabled.

Lost

Mr. Epstein rose to thank Mr. Treleaven, Ms. Sperdakos and staff for all their hard work.

The Treasurer thanked Mr. Epstein and committee members for their contribution.

French Language Component of the Bar Admission Course

Mr. Wright's report on the french language component was deferred to October, 1998.

REPORT OF THE EXECUTIVE DIRECTOR EDUCATION

Re: Examination Security

Mr. Epstein presented the Report of the Executive Director of Education which was circulated to Convocation.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Executive Director of Education requests leave to report:

1. On May 29, 1998, the Admissions and Equity Committee reported to Convocation a breach in examination security relating to the Phase Three 1997 examinations and ensuing supplemental examinations. Convocation adopted the Report, which reads in full as follows:

    1. It has come to the attention of the Department of Education and the Admissions and Equity Committee that a Phase Three 1996 examination was in circulation among an unknown number of students during Phase Three 1997. This represents a breach in the examination security system as all examinations are administered according to a process that allows the development and maintenance of a confidential secure bank of questions. Some questions from the 1996 examination were re-used on the 1997 examination in the same course.

    2. There will be an investigation into the breach of examination security, and efforts will be made to determine how the breach occurred and who was involved.

    3. The Committee has also considered possible ramifications of the incident for students who failed an examination in which questions from a 1996 examination were re-used.

    4. Concern has been raised that because of the norm-referencing marking system, access to the examinations, if widespread, might have resulted in the pass for each examination being higher, thereby resulting in an unfairly elevated failure rate.

    5. While it is clear that there has been some breach of examination security, preliminary inquiries suggest that there was not widespread knowledge of the breach or widespread use of the leaked examination.

    6. Further, an examination of the pass rate in the examinations in 1997 does not suggest that the passing score in 1997 was affected by any breach in 1996 examination security. With respect to the 1997 examination in which questions from the circulated 1996 examination were re-used, the 1997 passing score was only 52.

    7. Students who failed examinations in 1997 are permitted to write two supplementals in any subject. Most students writing supplementals from Phase Three 1997 have now completed the process and have been called to the bar or are eligible for call to the bar. Approximately 46 students have not, as yet, completed the process. In most cases, students still in the process have already failed at least one, and in some cases two supplemental examinations, in addition to the original Phase Three 1997 examination in any given subject. The Committee is satisfied that this demonstrates weakness in the subject area, not an unfairly elevated passing mark. The supplemental examination process is continuing unaltered. There is one further supplemental examination sitting in July.

8. The Committee will consider what has occurred as it assesses what changes to make in the examination system for Phase Three 1998. The Committee will provide options and recommendations to Convocation in June.

2. In Public Law, the passing score was 65 per cent, with the number of students currently standing as failed in Public Law being 36. This is considerably higher than in other courses, in which the passing score and number of outstanding fails is as follows:

Criminal Procedure:	Passing score of 65%; number presently failed is 6
Estate Planning:	Passing score of 64%; number presently failed is 19
Civil Litigation:	Passing score of 54%; number presently failed is 16
Business Law:	Passing score of 52%; number presently failed is 17
Family Law:	Passing score of 48%; number presently failed is 8
Real Estate:	Passing score of 50%; number presently failed is 2
Professional Responsibility:	Passing score of 55%; number presently failed is 8

3. The particular concern in Public Law, because of the combination of the relatively high passing score of 65 per cent and the high number of outstanding fails (significantly higher than in any other subject), is whether some remedial adjustment ought to be made to alleviate the high fail rate in Public Law.

4. If, for example, the passing score is adjusted to 60 per cent, the number of failing students in Public Law will move downward slightly from 36 to 32. If the passing score is adjusted to 55 per cent, the number of students failing will move downward from 36 to 19. With a passing score of 50 per cent, the number of failing students moves downward from 36 to 14.

5. In Criminal Procedure, the passing score is also 65 per cent, producing a total of six failing students. Reduction of the passing score to 60 per cent would produce five fails. A reduction of a passing score to 55 per cent would reduce the number of failing students from six to four. A reduction of the passing score to 50 per cent would reduce the number of failing students from six to two.

6. In Estate Planning, the passing score is 64 per cent, producing a total of 19 failing students. Reduction of the passing score to 60 per cent would not reduce the number of failing students. A reduction of the passing score to 55 per cent would reduce the number of students from 19 to 11. A reduction of the passing score to 50 per cent would reduce the number of failing students from 19 to 8.

7. Convocation is asked to consider these matters and to determine whether any remedial action ought to be taken.

ALL OF WHICH is respectfully submitted

DATED the 11th day of June, 1998

It was moved by Mr. Epstein, seconded by Mr. Gottlieb that the passing marks be adjusted 10% down on Public Law, Criminal Procedure and Estate Planning and that the papers be regraded accordingly.

Carried

THE REPORT WAS ADOPTED

SUMMER STUDENT RECRUITMENT PROCEDURES

Mr. Epstein presented the Admissions & Equity Committee's Options Paper on the Summer Student Recruitment Procedures.

The Admissions & Equity Committee's

Procedures Working Group

Options Paper on the
Summer Student Recruitment Procedures

June 1, 1998

Purpose of this Options Paper

1. The Society's Admissions & Equity Committee ("A & E Committee") began discussing the effect of U.S. recruitment activity on the summer student recruitment program early in 1998.

2. At its March 12, 1998 meeting, the A & E Committee struck a working group to review the Society's articling and summer student recruitment procedures in light of changes in the legal marketplace. J. Jay Rudolph, lawyer & mediator and former Chair of the Articling Sub-Committee, was appointed to chair the group. Mimi Hart, Director of Placement for the Law Society, was appointed from staff. The Chair was to assemble the full working group within one month's time.

3. On March 17,1998, Philip Epstein, Chair of the A & E Committee, and Mimi Hart attended a meeting of the chairs of the student committees of a number of downtown Toronto firms ("Student Committee Chairs"). The Student Committee Chairs wanted to discuss the Law Society's long standing summer student recruitment procedures (" summer procedures") in light of heightened recruitment of Canadian law graduates by U.S. law firms prior to the time Toronto firms are permitted to recruit under the summer procedures. The Student Committee Chairs expressed concern that the existing summer procedures prevent Toronto law firms from competing with their U.S. counterparts for summer students. In their view, the effect of summer emigration of highly qualified students is to make it more unlikely that these students will article and ultimately practice in Ontario. It is their view that ultimately this will have an adverse impact on the public interest associated with the retention of highly qualified lawyers in Ontario.

4. The Student Committee Chairs presented the Law Society with a draft letter proposing a new recruitment schedule to take place in the fall, along the lines of the model used by the National Association of Law Placement (NALP) in the U.S. A copy of that draft letter is attached as Appendix "A" with the firm names removed.

5. The A & E Committee revised its instructions to the working group to focus on summer student recruitment and to produce an options paper on the summer student recruitment procedures by June 1, 1998. A working group was formed to consider summer student recruitment in Toronto.

Members of the Working Group

6. The Chair of the working group is J. Jay Rudolph, lawyer & mediator, and former Chair of the Law Society's Articling Sub-Committee. The Members of the working group are: Gina Alexandris, Career Development Officer ("C.D.O"), Osgoode Hall Law School (member of the Canadian Legal Career Development Network and acting as a liaison to the law school administration); Monica Biringer, Student Committee Chair, Osler, Hoskin & Harcourt; Marilyn Bode, former Articling Director for the Law Society and currently Director of Student Programs, McCarthy, Tétrault; Julie Dabrusin, BAC student representative (and graduate of the University of Toronto Faculty of Law, articling with Rogers, Moore); Mimi K. Hart, Placement Director for the Law Society (and Acting Articling Director for the Law Society); Steve Leckie, BAC student representative (and graduate of Dalhousie Law School, articling with the Department of Justice); and, Paul B. Schabas, Student Committee Chair, Blake, Cassels & Graydon.

Context

7. The working group considered the summer student recruitment procedures in the context of the current Bar Admission program, including articling. The working group is aware that the Bar Admission Course is under review and that it may be necessary to revisit summer student recruitment in light of any substantial change that may be made to the Bar Admission Course.

8. In considering the options for summer student recruitment, the working group made the following assumptions:
   a. that the current practice of regulating summer student recruitment in Toronto only would continue; and,
   b. that access to (or eligibility for) the summer student program would continue to be open to both first and second year law students.

Background on the Summer Student Program

9. The Law Society became involved in regulating summer student recruitment to provide structure to the recruitment process and to address concerns that the summer student recruitment might be used to subvert the articling recruitment procedures.

10. A comprehensive review of the summer student program was undertaken in September, 1988 when the Legal Education Committee established a Sub-Committee to:

   a. determine the extent of the summer student program;
   b. ascertain the opinions of its participants;
   c. identify problems with the program and to canvass solutions, including whether the Law Society should alter its summer student recruitment procedures to create a more or less regulated process.

11. The Sub-Committee's 1988 Report included the following key observations and recommendations:

   a. that the summer student program (then comprising approximately 215 students) was increasing in size with the trend for medium and large-sized firms to fill an increasing number of their articling positions through summer student recruiting;

   b. that the majority of law firms and the vast majority of law students surveyed by the Sub-Committee wanted the summer student program to continue and did not want it to be restricted only to second year law students;

c. that it was important students not feel prejudiced when seeking articling positions if they had not "summered" with a law firm. Consequently, the Sub-Committee recommended that firms be asked to reserve a number of articling places for students who did not summer with them. This recommendation gave rise to the 50/50 guideline, which remains in effect;[1]

d. that quality work for articling students should remain the primary focus of concern for law firms and that firms should limit the number of summer students they engage if they cannot provide sufficient quality work for both summer students and articling students;

e. that the number of summer students employed by a firm should relate to the firm's need for summer help and not its desire to establish a recruiting pool for articling students;

f. that there was no particular interest in or need to introduce a matching program for summer student recruitment;

g. that firms should not refuse to consider extending an offer of articling employment to a student simply because the student summered at another firm;

h. that students be given adequate time to consider offers of summer employment; and,

i. that the summer student program should continue to be monitored by the Law Society.

Current Summer Student Recruitment

12. The current summer student recruitment procedures (attached as Appendix "B") resemble the procedures that emerged following the 1988 review. Key features of the current program are:

a. summer student recruitment is regulated for Toronto firms;

b. the summer student program is open to both first and second year students;

c. recruitment occurs during the February "mid-winter break" week of the majority of law schools whose graduates qualify to enter the Bar Admission Course;

d. students who submit resumes for summer employment by the end of January are guaranteed that their application will be treated without regard for the date of receipt;

e. the date and time of interviews is not communicated before a specific time on a specific day approximately two weeks prior to interviews being conducted;

f. interviews are permitted commencing on Monday of the interview week (approximately two weeks following scheduling of interviews);

g. no offers of employment (and no communication of the intent to make an offer) may take place until 4:00 p.m. on Wednesday afternoon, the third day following the commencement of interviews; and,

---

[1] The 50/50 Guideline asks firms in the summer student program having more than five articling students to reserve a number of their articling positions for students who did not participate in their own summer student program. It asks firms to either restrict the number of their summer students hired back as articling students to approximately 50% of the number of the articling students they employed in the previous year, or to restrict the number of summer students hired to approximately 50% of the number of articling students the firm employed in the previous year.

h. approximately 24 hours is afforded students to consider offers.

Number of students involved in the Summer Student Program

13. The number of students currently hired as summer students in Toronto is conservatively estimated at 212 annually.[2]

Impact of U.S. Recruitment

14. Recruitment of Canadian law graduates has always been competitive. In recent years, however, the competition has changed with U.S. firms hiring an increasing number of Canadian law students as summer students and Canadian law graduates as associates. The U.S. firms, predominantly from New York, Boston, and California, offer attractive salaries to both summer students ($1,800 U.S. per week) and recent graduates (in excess of $100,000 U.S. per annum plus bonuses). U.S. firms also offer long term job guarantees and often subsidize the student's final year's tuition.

15. To ascertain the number of students accepting U.S. offers in the 1997-1998 academic year, the working group asked the Canadian Legal Career Development Network (CCDN) to conduct a survey of its members in April, 1998 . A chart summarizing the results of the survey is attached as Appendix "C".

16. The survey indicates that approximately 42-44 students in either first or second year law school at the eleven schools that participated in the survey accepted an offer to summer in the U.S. in 1998, while 25 students in third year accepted an offer to commence employment as associates following graduation. This represents approximately 3% of an average graduating class, (based on Bar Admission Course enrolment of approximately 1,200 students annually) or approximately 4% of the number of students (n = 1,000) who are believed to apply for summer student positions in Toronto each year. We have no empirical data as to whether the number of summer students accepting U.S. offers is expected to increase but the large Toronto law firms believe this to be the case.

17. While the number of students involved in U.S. recruitment may seem small, the students recruited tend to be at or near the top of their class. Thus, the term "brain drain" has been used to describe the situation. Moreover, U.S. recruitment may be on the rise. To date, U.S. firms have limited active on-campus recruitment to a few law schools (e.g., U. of T., Osgoode Hall Law School, and McGill). However, large Toronto firms are concerned that other law schools will invite U.S. firms to their schools.

18. Some Toronto firms have responded to the impact of U.S. recruitment by increasing salaries paid to summer and articling students (to $1,000/wk), agreeing to pay an amount (e.g., $4,000 - $5,000) toward tuition fees and making longer term employment commitments to students that article with them. Other firms are waiting and monitoring the effectiveness of such measures.

19. U.S. firms recruit in compliance with National Association of Law Placement (NALP) guidelines, which permit recruiting in the fall - four months before the Law Society's summer recruitment procedures permit interviewing and offers of summer employment. Some U.S. recruitment is conducted on campus at Canadian law schools (it seems to some extent with the co-operation of the schools) and some is arranged privately. In addition, some law firms from other Canadian provinces conduct summer employment interviews with Ontario law students in the fall.

---

[2] This is based on a 1998 Law Society Placement Office survey of 57 firms wherein twenty-seven firms responded that they hired summer students. The same survey suggests as many as 1,000 students may apply for summer positions in Toronto.

20. The working group noted that on certain levels Toronto firms cannot compete with some U.S. firms, and that merely changing summer recruitment will only address part of the problem. Though no formal survey of students has been conducted, the main reasons students are believed to accept summer (and subsequently associate) positions with U.S. firms include:

a. high salaries;
b. bonuses;
c. "New York" (international) work;
d. no Bar Admission Course (including articling);
e. the advantage of accepting an offer of a summer job in the fall of second year, rather than risking the uncertainty of obtaining a job in Toronto in the later February recruitment process.

21. Examination of the summer recruitment process only addresses the final factor listed above. Representatives of the large firms on the working group feel strongly that changing the summer recruitment process to compete with U.S. firms in the fall may only stem, to some extent, the brain drain.

Possible approaches to Summer Student Recruitment:
A description of the options considered by the Working Group

22. The working group met on five occasions for a total of twelve hours to identify and work through various approaches to summer student recruitment in Toronto, in the hope of finding a recruitment model that would meet the needs of all interested parties.

23. The group identified for consideration four recruitment models and three additional options that could be added to the current program, which were given the following descriptive names:

a. Status Quo Model
b. Law Society withdrawal Model
c. Fall Recruitment Model
d. Summer Recruitment Model
e. Early Interviews Option
f. Hybrid Option
g. Special Exemptions Option

24. With the assistance of a facilitator, the working group analysed each option from the perspective of the various interested parties: students (including Ontario students attending out-of-province law schools[3]) , the law schools, and the law firms that recruit summer students in Toronto. Regulatory and implementation issues were also considered for each option.

25. What follows is a description of the recruitment options considered by the working group.

26. The Status Quo Model

This model entails retaining the current recruitment process, which occurs in February in concert with the mid-winter break of the majority of law schools whose graduates qualify for admission to the Bar Admission Course.

[3] Approximately 186 students (15.5% of the Bar Admission Course class) attend law schools outside Ontario. Many of these students are originally from Ontario and plan to practise in Ontario upon their call to the bar.

Principal Advantages:

a. timing does not disrupt the law school schedule as recruitment is conducted when classes are not in session at most schools;
b. a known process easy to plan for by students, schools and firms;
c. provides more time for students to prepare for recruitment than is the case with models that have recruitment earlier;
d. occurs when second year first term marks are available, which is believed to minimize the disadvantage of earlier recruitment for students who require time to adjust to law school in order to demonstrate their academic ability;
e. has received little or no complaint from Ontario students attending out-of-province law schools, who may be prejudiced by a move to recruitment when classes are in session;
f. creates a perception of a level playing field for those interested in recruitment in Toronto.

Principal Disadvantages:

g. takes place after U.S. and some other recruiters are able to make offers to Ontario students, thereby imposing an unintentional recruitment barrier to Toronto firms;
h. does not provide means for students to weigh summer job opportunities at the same time;
i. fails to deal with the perception/reality of a "brain drain" from Ontario of highly qualified law graduates;
j. co-opts the mid-winter break for students who would prefer to do something other than participate in recruitment activities during their school break;
k. prolongs the recruitment schedule into the second term of the school year, in comparison with earlier recruitment options.

Implementation Issues: None.

27. Law Society withdrawal from regulation of summer student recruitment

This option entails the Law Society withdrawing from pro-active regulation of the Summer Student Recruitment Program.

Principal Advantages:

a. allows law schools, students and firms to develop their own process;
b. Toronto firms could respond flexibly to market forces and interview and make offers at the same time as U.S. and some other recruiters;
c. requires little or no up-front administration by the Law Society;
d. allows students with U.S. offers to test their marketability in Toronto before having to respond to a U.S. offer.

Principal Disadvantages:

e. lack of structure and certainty in the timing of interviews and offers;
f. disrupts law school teaching schedules;
g. may create unfair advantage for students at Toronto schools;
h. students and firms may have no one to address concerns or complaints about inappropriate conduct in the recruitment process;
i. Law Society abdicating its role in the process may particularly prejudice NCA, Aboriginal, Mature, and out-of-province students who rely on the Law Society's involvement to establish a level playing field for student recruitment.

Implementation Issues: Could be difficult to implement in the short term, but with appropriate notice could be achieved with relative ease.

28. Fall Recruitment Model

This model involves moving summer student recruitment to the fall.[4] Otherwise, the procedures for fall recruitment would mirror the current procedures in the Status Quo Model.

Principal Advantages:

a. U.S. and Toronto recruiting would take place concurrently, providing Toronto firms the opportunity to interview and make offers at the same time as their U.S. counterparts;
b. may stem the loss of legal talent to U.S. market;
c. gives all students the opportunity to explore various options at one time;
d. facilitates on-campus interviewing as students are in class when recruitment takes place;
e. reduces pressure on law schools to produce first term transcripts.

Principal Disadvantages:

f. disrupts current law school teaching schedule (e.g., mooting week) for all students for the sake of a small number of students involved in U.S. recruiting (some of whom may not be interested in summer employment in Toronto);

g. may place greater burden/prejudice on Ontario students attending out-of-province law schools outside Toronto who may be required to make an extra trip to Toronto to be interviewed for summer employment;
h. is based on first year marks and thus affords less time for students to adjust to law school before recruiting starts. This is believed to disadvantage many students who need time to adjust to law school before excelling academically;
i. would likely result in fragmentation of the summer student recruitment program, separating first and second year recruitment. Fragmentation may increase disruption at the law schools and will likely involve some increased administration on the part of the Law Society;
j. co-ordinating recruitment times may encourage greater numbers of Ontario students to seek positions outside Ontario;
k. may compel smaller firms to make summer employment commitments before they would otherwise want to.

Implementation Issues : Impractical for 1998, due to lack of notice to students. Feasible for 1999.

29. Summer Recruitment Model

This model involves moving summer student recruitment back seven months from its present timing in February and back three months from what is contemplated by the November time frame of the Fall Recruitment Model. It would otherwise resemble the Status Quo and Fall Recruitment models in structure.

Principal Advantages:

a. does not interfere with the law school schedule;
b. may be more economical and accessible to Ontario students attending out-of-province law schools who are home for the Summer;
c. provides Toronto firms with a jump on U.S. and other recruiters.

---

[4] The Fall Recruitment Model originally followed the Student Committee Chairs proposal (described in Appendix "A") but was redefined by the Working group as the Status Quo model transplanted to the first week of November. The redefinition followed reports that U.S. firms were dissatisfied with aspects of the NALP model (e.g., the long period of time during which students can hold open multiple offers). U.S. recruiters at the NALP conference indicated they liked the structure of the Ontario system, which gets the recruitment process completed in a much shorter time frame.

Principal Disadvantages:

d. enormous disruption for firms concurrently engaged in articling recruitment during the summer;
e. may interfere with students' summer plans (e.g., jobs needed to pay higher tuition fees);
f. makes the recruitment process more remote in time from employment;
g. less information available on law school performance (at most first year marks);
h. leaves students with less time to prepare for recruitment;
i. may encourage firms to hire more 1st year summer students, to get a jump on second year recruitment;
j. encompasses most of the disadvantages of the Fall Recruitment Model, and adds its own unique set of problems, including the need to develop a separate recruitment process for 1st year students.

Implementation Issues: Impossible for 1998; feasible for 1999.

30. Early Interviews Option [to be employed in conjunction with the Status Quo Model]
This option, originally cast as a "promotions model" and involving firms attending at the law schools in the fall to promote articling in Ontario and their firms in particular (but without conducting interviews or making offers of employment), changed as the working group considered the effectiveness of this approach in dealing with students with offers from U.S. firms. It became clear that to attract the attention of students with offers, Toronto firms would have to do more than mere promotion. To be effective, this model would have to include the ability to interview one-on-one in the fall and to commit to interview students in February, when offers may be made.

Principal Advantages:

a. allows firms to speak with students with U.S. offers on an individual basis at the same time as U.S. firms interview and make offers;
b. gives students early information on job opportunities and quality of work available in Toronto to which they may otherwise not be exposed until Careers Day in January;

Principal Disadvantages:

c. not likely to be an effective tool in persuading students with U.S. offers to turn them down;
d. only way this option could be effective is if offers could be made, therefore, may encourage misconduct;
e. may result in firms filling all or substantially all their interview spaces in early interviews with little or no interview space left for other students;
f. possible prejudice to Ontario students at law school outside Ontario;
g. many of the disadvantages of the Fall Recruitment Model with none of the advantages;
h. not a significant improvement from what can be done under existing procedures.

Implementation Issues: Impractical for 1998 due to lack of notice to students, feasible for 1999.

31. Hybrid Option [to be employed in conjunction with the Status Quo Model]
This option was developed as a transition option until the need to adopt a different recruitment model is more persuasively demonstrated. It involves allowing firms wishing to recruit in the fall concurrently with U.S. recruiters to do so; however, conditions that attach to such permission would include that firms must register with the Law Society and sign an agreement that they would abide by stipulated recruitment dates and practices (which would be similar to the NALP guidelines). In addition, no more than 20% of a firm's complement of articling students could be recruited in this way. [5]

---

[5] This is important because of the link between summer and articling recruitment whereby a firm may take half its next year's articling complement from among its summer student ranks. Articling recruitment is closely regulated as articling is a mandatory component of the licensing process.

Principal Advantages:

a. firms can interview and make offers to students at the same time as U.S. recruiters and thus may stem "brain drain";
b. gives affected students the ability to weigh options at the same time;
c. potentially affects fewer students than moving to fall recruitment;
d. less prejudice to Ontario students attending out-of-province schools than moving the entire recruitment program to a time when law school classes are in session;

Principal Disadvantages:

e. places incremental resource and cost burden on Toronto firms, law schools and students that would have to go through the recruitment process twice (possibly three times);
f. disruptive to law school teaching schedule;
g. has the potential to be the equivalent of fall recruitment with all the disadvantages even though targeted group is smaller;
h. stratifies student group into three "classes".

Implementation Issues: Difficult for 1998, feasible for 1999.

32. Special Exemptions Option [to be employed in conjunction with the Status Quo Model]
This option was developed as a transition option until the need to adopt a different recruitment model is more persuasively demonstrated. It involves providing special exemptions to students who receive offers from U.S. or other firms in the fall so that they may engage in summer student recruitment activity (interviews and offers) with Toronto firms before they would be required to respond to the foreign offer. This option would involve the Law Society granting exemption letters to students wishing to investigate their options in Toronto.[6]

Principal Advantages:

a. deals precisely with the problem of Toronto firms not being able to engage in recruitment activity with students with U.S. offers with a minimum of disruption to the existing recruitment program, law school schedules, and the vast majority of students who are not considering employment outside Ontario;
b. puts onus of applying for exemption on students (who know whether they are interested in summer employment in Toronto);
c. allows monitoring of the numbers of exemptions granted each year, which may be useful in assessing when/if there is a need for more extensive measures to be taken;
d. facilitates tracking and surveying of students granted exemptions;

[6] This is not unlike the current practice whereby students unavailable to interview in the prescribed week may apply to the Law Society for exemption to be interviewed early. However, the existing early interview exemption does not permit offers to be made. Students seeking special exemptions to interview and receive offers of summer employment in the Fall would be expected to provide evidence to the Law Society of their foreign offer before being granted a special exemption.

Principal Disadvantages:

e. creates elite group of students who (in addition to their U.S. offers) will gain access to Toronto firms before other students who plan to remain in Ontario;

f. may subvert the recruitment process by encouraging students with no intention of summering elsewhere to apply to the U.S., solely to qualify for a special exemption to meet Toronto firms early;

g. does not provide Toronto firms with active role in recruiting students since firms only respond to U.S. offers;

h. will likely encourage greater numbers of students to apply to U.S. firms and therefore ultimately increase the number of students who may accept U.S. offers;

i. without a restriction on the number of students that might be engaged in this manner, allows Toronto firms to fill their summer student complement (from which half the firm's articling students may be chosen) from a pool that only includes students participating in U.S. recruitment.

Implementation Issues: Possible in 1998.

Input from Others

---

33. The working group asked the Canadian Legal Career Development Network to gather input from students and law school administrators on some of the options being discussed by the working group. Highlights of some of the responses received are contained at Appendix "D". Some recurring themes in the submissions are noted below.

a. Risk of over-reacting: Students and administrators wondered whether the problem was large enough to warrant a complete overhaul of the system, even if the numbers might increase in the future. There was a feeling that most students who go to the U.S. do so regardless of the timing of summer recruitment and whether or not they may have opportunities with Toronto firms. While some Ontario law schools support the idea of fall recruitment as a manner of levelling the playing field, others, both within Ontario and outside the Province, believe that an entire overhaul of the present system is an over-reaction to the situation. They feel very few students going to the U.S. could be persuaded to stay in Ontario. They indicate there may be some advantage in maintaining the Status Quo and monitoring the number of students going to the U.S. before taking any action.

b. Law School scheduling: The law schools' inability to accommodate a change to recruitment during the school year was a large concern expressed in connection with the Fall Recruitment Model. The first priority of the law schools is legal education. Law schools believe a change to fall recruitment will affect the entire law school, disrupting students who choose not to participate in summer interviews and those for whom the program does not even apply (e.g., third year students in combined classes with second year students).[7] However, some schools reluctant to accommodate a change to recruitment in the fall felt that it could be done, if delayed until 1999.

c. Law School atmosphere: Concern was expressed at the possible implementation of the Hybrid or Special Exemption options as it is felt that they would result in tension at the law schools between students who are hired early and those who are not.

d. Reduced Time for Student Preparation: Reduced time for students to research career options was a concern expressed by many schools in relation to fall recruitment.

---

[7] The fall term in most schools is shorter than the winter term and is further shortened by the number of religious holidays. It would be difficult to introduce an interview/reading week in the fall without schools starting in August, which would create additional expenses for all students at a time when tuition fees are rising.

e. Equity & Access Issues

i. Systemic access and equity concerns were raised in connection with a move to fall recruitment. For example, it was noted that students from groups under-represented in the profession often prefer employment in Toronto, where the legal community is diverse. Moving recruitment to the fall, when students outside Toronto are in classes, may have a detrimental effect on the ability of these students to attend interviews in Toronto.

ii. The issue of second year marks not being available in the fall recruitment proposal was a concern for many students who need time to adjust to law school before excelling academically, but was of particular concern for Aboriginal Students, students with family responsibilities, and students with English as a second language. It is believed that these students need more time to adjust to law school, and hence are better able to demonstrate their academic strength by the second term of second year, when the Status Quo recruitment occurs. Any recruitment process that requires them to compete earlier may be prejudicial to them.

iii. Many schools are adamantly opposed to recruitment of first year students in the fall, for equity, access and preparation reasons.

iv. If, as a result of a change to fall recruitment, firms begin to recruit on campus at schools outside Toronto, students at these schools believe this would have the beneficial effect of increasing participation in summer interviews, particularly among those who cannot afford repeated trips to Toronto for interviews.

f. Concern over change in 1998: Most schools expressed the view that the summer student recruitment program should not be changed in 1998 due to the lack of notice to students. A few felt the Special Exemptions option made the most sense in the interim as it allows students with offers to explore their options without inconveniencing all students in the summer student recruitment process.

Analysis of Options

34. The recruitment options were analyzed by the working group. No one option could be agreed upon as meeting the needs of all interested parties. Ultimately, the working group concluded that the two most preferred options were Fall Recruitment or a retention of the Status Quo Model. There was some willingness to consider retention of the status quo with special exemptions as an interim measure for 1998. The working group's analysis is set out below.

35. Least Attractive Options

a. Hybrid Option - The Hybrid Option draws criticism from all interested groups. Although it provides an opportunity for Toronto firms to compete for students with U.S. offers, it does so at a very high cost. Firms are not satisfied with this approach as it creates incremental cost and resource burdens for them as the recruitment process would have to be undertaken at least twice each year, and perhaps three times if first year students are segregated out of fall recruitment. Students not selected in early recruitment will have to return to the process in February at additional expense over the current "one shot" process and, for a considerable period of time during the school year, a small elite class of students with summer jobs will co-exist at the law schools with those who have not yet been selected. The law schools are generally opposed to any option that takes away teaching time to allow for recruitment, which is a feature of this option. The Hybrid option also creates additional work for the Law Society, which will be obliged to monitor two and possibly three recruitment programs in addition to administering the special agreements with the firms unique to the Hybrid option.

b. Law Society Withdrawal - This option was universally rejected as there would be no effective method of requiring participants in summer student recruitment to comply with conditions necessary to ensure fairness and equity in the process. Students, who participate in the process only once or twice, generally report comfort with the Law Society's involvement, which ensures the rules are well publicized and provides a resource for questions and complaints. Firms want Law Society involvement to protect the interests of the vast majority of them that recruit in compliance with the Procedures. Law schools are thought to favour Law Society involvement in order to reduce pressure on them to become more involved in the administration and "governance" of student recruitment. There is also concern that if the Law Society withdraws, protections in place in the interests of equity seeking groups might be jeopardised.

c. Summer Recruitment Model - This model is closest to the Status Quo in that it avoids disruption at the law schools and it may facilitate out-of-province students participating equally in the recruitment process by having recruitment take place when classes are not in session and students may be in Ontario. It provides Toronto firms with a jump on recruiters from the U.S. However, the associated disadvantages are numerous. It is impossible for first year students (who would have to apply for summer employment in law firms before even starting law school) to be recruited using this model. This means a separate recruitment program would have to be developed for first year students. This adds to law firm workloads and Law Society administration. Summer recruitment may also interfere with time needed by students for summer employment. This is a growing concern as tuition fees for professional programs rise significantly. Only first year marks are available at this time, and, as noted, this is thought to disadvantage students that require time to adjust to law school in order to demonstrate their academic abilities. Summer recruitment makes law school efforts to assist students with their job search more challenging. Finally, the timing is difficult for law firms that are focussed on articling student recruitment in the summer months. This option has all the disadvantages of fall recruitment, plus several of its own.

d. Early Interviews Option - This option provides firms with limited recruitment ability in the fall. Firms may meet with students in one-on-one mini interviews and commit to an interview in the usual February interview period. However, no offer of employment can be made during the fall. On close examination, this option was found to have all the disadvantages of the fall recruitment model with none of its benefits. It is unlikely a student with an offer of employment from a U.S. firm would turn it down based on the promise of an interview from a Toronto firm four months down the road. It creates two (possibly three) interview periods and the associated work on the part of firms and the Law Society. The only way this option could address the concern expressed by firms is if it were implemented and breached, i.e., if firms actually made offers in the fall. From a regulatory standpoint, this option would be difficult to monitor and police.

36. Most Attractive Options

a. Fall Recruitment Model - Fall recruitment allows firms to interview and make offers to students concurrently with U.S. firms and some other Canadian recruiters. Most large Toronto firms favour this option as it eliminates the unintentional recruitment obstacle imposed by the current summer procedures that precludes them from competing with U.S. and some other firms that recruit in the fall. Further, it may assist in stemming the "brain drain" and loss of legal talent to the U.S. Some students favour this model as it promises some consistency in recruiting. Most schools are against fall recruitment as it is disruptive of the law school teaching schedule[8], and there is skepticism at the law schools that it will achieve the desired result. Implementation of this model will almost certainly fragment summer student recruitment into two segments: a fall schedule for 2nd year students; and a later program for 1st year students. This fragmentation may add to law school concerns about disruption and increase Law Society administration.

---

[8] Moving summer student recruitment to the fall (or any time when law school classes are in session) would have an inevitable disruptive effect on the law schools as hundreds of students absent themselves from classes to attend summer employment interviews.

It may also result in fewer first year students obtaining summer employment with law firms if firms decide to eliminate or reduce a second recruitment process. Access issues arise in any option that schedules recruitment when students might have to incur additional transportation costs. This is particularly a concern for Ontario students attending out-of-province law schools.

b. Status Quo Model - The Status Quo seems to be acceptable to most students and most law schools and some firms that hire summer students; however, it fails to deal with the concern expressed by large Toronto firms (which hire the majority of summer students) that top Canadian law graduates are being recruited by U.S. firms before they have an opportunity to recruit. Recruitment during mid-winter break levels the playing field for Ontario students attending law school outside Ontario who are in Ontario when interviews are being conducted.

c. Special Exemption Option - This option provides Toronto firms with an opportunity to interview students with U.S. or other offers while avoiding the disruption and disadvantages associated with moving the entire recruitment process. It deals with the concern that some students may take the "bird in the hand" offer from a U.S. recruiter because they are uncertain of their chances with Toronto firms. If students with offers from other jurisdictions want to be considered for positions in Toronto, they may apply to the Law Society for a special exemption to meet with Toronto firms. A benefit of this option is that the number of students applying for exemptions can be monitored and follow-up can be undertaken to determine the effect of special exemptions. The disadvantages of this option are: that it creates an elite group of students whose ability to have early interviews with Toronto firms may be based on judgments made elsewhere. It does not allow Toronto firms to recruit generally. It only allows Toronto firms to respond to students with foreign offers. It may encourage students with little or no interest in U.S. firms to apply outside Ontario in order to gain an advantage over student colleagues seeking summer employment in Toronto, which may result in more students going to the U.S. As noted, there is some support for the Status Quo in conjunction with the Special Exemptions option as an interim measure to address the problem in a modest way until the need for a different recruitment model is more persuasively demonstrated.

Conclusions

37. The working group was unable to identify a universally acceptable recruitment model giving equal weight to the interests of students, law schools and large Toronto firms. Nonetheless, the working group did identify two "most preferred" options: Fall Recruitment and the Status Quo [with or without the Special Exemptions option].

38. Most large downtown Toronto firms feel strongly that fall recruitment is the only model that will allow them to stem the tide of highly qualified students leaving for the U.S. and elsewhere. They view U.S. recruitment as a real and increasing threat to the quality of legal services in Ontario that requires immediate action on the part of the Law Society. They understand the concern that fall recruitment is disruptive to the law schools but note that the disruption already currently exists to a lesser extent with U.S. and other non-Ontario firms recruiting in the fall.

39. Most law schools feel strongly that summer student recruitment should not interfere with the law school teaching schedule. They advocate against a move to recruitment that conflicts with the law school schedule. They are also concerned about recruitment that takes place before first term marks are available for the reasons set out above.

40. Some interested parties think a change from the status quo is just a "tail wagging the dog" reaction to a problem that has more to do with globalization and the attractiveness of foreign legal opportunities than the ability of Ontario law firms to make offers earlier than presently permitted. They express concern that changing the process may create disadvantages for the vast majority of students in the process who are committed to summering, articling and practising in Ontario.

Implementation

41. Wide-spread concern was expressed about changing the summer student recruitment program in 1998, mostly due to the insufficient notice period for students. If a program change is to be implemented for the long term e.g., a move to Fall Recruitment, several interested parties suggested the Status Quo [with or without the Special Exemption option] should be the model for 1998.
A letter from Toronto law firms was circulated.

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

(1) Copy of draft letter from the Student Committee Chairs to Mr. Philip M. Epstein, Q.C. re: Summer Student Recruitment by American Law Firms. (Appendix "A")

(2) Copy of the current summer student recruitment procedures. (Appendix "B")

(3) Copy of a survey conducted by the Canadian Legal Career Development Network summarizing the results of the number of students accepting U.S. offers in the 1997-1998 academic year. (Appendix "C")

(4) Summary of Comments received from the Canadian Law Schools. (Appendix "D")

It was moved by Mr. Epstein, seconded by Mr. Carey that the recommendation of the Admissions & Equity Committee set out at paragraph 24 on page 18 of the Report that the continuation of the current summer student recruitment procedures be adopted.

Not Put

It was moved by Ms. Puccini, seconded by Mr. DelZotto that the Law Society withdraw from the regulation of the summer student recruitment as set out at page 9, paragraph 6 of the Options Paper.

Lost

ROLL-CALL VOTE

Adams	For
Armstrong	Against
Backhouse	Against
Banack	Against
Carey	Against
Carter	Against
Cronk	Against
Crowe	For
DelZotto	For
Epstein	Against
Finkelstein	Against
Gottlieb	For
Krishna	Against
Lamek	Against
MacKenzie	Abstain
Marrocco	For
Murphy	For
Ortved	Against
Puccini	For

Sachs	Against
Stomp	For
Swaye	Against
Wilson	Against

Vote 14 - 8 (1 Abstention)

It was moved by Mr. Armstrong, seconded by Mr. Finkelstein that the proposal in Schedule D of the June 9th, 1998 letter from the law firms that the recruiting period be moved to November, be adopted.

An amendment was accepted by the mover and seconder that paragraph 7 in Schedule D re: recruitment of first year law students be deleted and the matter be brought back to Regular Convocation in June.

Carried

ROLL-CALL VOTE

Adams	For
Armstrong	For
Backhouse	For
Banack	For
Carey	Against
Carter	For
Cronk	For
Crowe	For
DelZotto	Abstain
Epstein	Abstain
Finkelstein	For
Gottlieb	For
Krishna	For
Lamek	For
MacKenzie	For
Marrocco	For
Murphy	For
Ortved	For
Puccini	For
Sachs	For
Stomp	Against
Swaye	For
Wilson	For

Vote 19 - 2 (2 Abstentions)

It was moved by Ms. Cronk, seconded by Mr. Carter that the matter concerning the 50% guideline be sent to the Working Group for consideration.

Carried

It was moved by Mr. Epstein, seconded by Mr. Carter that the issue regarding the licensing examination policy set out on page 6 of the Admissions & Equity Report that students be permitted to review their failed examinations and the marking guides, be adopted for Phase Three 1998.

Carried

Report on Task Force on Examination Performance

The Report on Task Force on Examination Performance was deferred to the October Convocation.

THE ADMISSIONS & EQUITY REPORT AS AMENDED WAS ADOPTED

MOTION FOR INTERIM SUSPENSION (cont'd)

PRESENT:

The Treasurer, Adams, Backhouse, Banack, Carey, DelZotto, Epstein, Gottlieb, MacKenzie, Murphy, Swaye and Wright.

.....

.....

IN PUBLIC

.....

RE: Roland William PASKAR - Mississauga

Mr. Cowie appeared for the Society. The solicitor was not present.

A letter dated June 11th, 1998 to the solicitor from Ms. Cowie was circulated and filed as Exhibit 3.

Convocation heard argument from Ms. Cowie on the issue of notice under section 33 of the Law Society Act. Counsel for the Society sought relief under the Statutory Powers Procedure Act and not the Law Society Act.

Convocation proceeded to hear the application.

Ms. Cowie made submissions that the solicitor be suspended on an interim basis in order to review the solicitor's trust records.

It was moved by Mr. Epstein, seconded by Mr. MacKenzie that the solicitor be suspended on an interim basis forthwith until further ordered by Convocation and the matter be adjourned until June 25th, 1998.

Counsel, the reporter and the public withdrew.

The Epstein/MacKenzie motion to suspend the solicitor on an interim basis was adopted.

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended forthwith on an interim basis until further ordered by Convocation and the matter be adjourned to June 25th to give the solicitor an opportunity to bring a motion to vary this Order.

CONVOCATION ROSE AT 6:05 P.M.

Confirmed in Convocation this 25 day of September, 1998

Harvey T. Strosberg

Treasurer