

MINUTES OF CONVOCATION

Friday, 29th May, 1992  
9:30 a.m.

PRESENT:

The Treasurer (James M. Spence), Bastedo, Bellamy, Brennan, Campbell, Carter, R. Cass, Copeland, Cullity, Curtis, Elliott, Epstein, Farquharson, Feinstein, Furlong, Goudge, Hickey, Howie, Howland, Jarvis, Kiteley, Lamont, Lawrence, Lax, McKinnon, Manes, Mohideen, Murphy, Murray, O'Brien, D. O'Connor, S. O'Connor, Palmer, Pepper, Peters, Rock, Ruby, Scace, Scott, Somerville, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

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IN PUBLIC

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The Secretary reported on the nomination received for the office of Treasurer. Congratulations were extended to Mr. Rock who then addressed Convocation briefly.

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DRAFT MINUTES

The Draft Minutes for March 26th, March 27th, April 23rd and April 24th, 1992 as amended were approved.

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MOTIONS

It was moved by Ross Murray, seconded by Don Lamont THAT Robert Carter be appointed a member to the Ontario Courts Appointments Advisory Committee.

Carried

It was moved by Ross Murray, seconded by Don Lamont THAT Denise Bellamy, Lloyd Brennan and Joan Lax be appointed as members to the Advocates Society Institute.

Carried

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LEGAL EDUCATION COMMITTEE

Mr. Lamont presented the Report of the Legal Education Committee of its meeting on May 14th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL EDUCATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of May, 1992. The following members were present: Donald Lamont (Vice-Chair in Chair), Lloyd Brennan, Carole Curtis, Philip Epstein, Stephen Goudge, Vern Krishna, Laura Legge, Marc Somerville. Representing the law schools was: Dean Berryman. Representing the Bar Admission Advisory Committee was: Jan Divok. Staff in attendance were: Marilyn Bode, Holly Harris, Cheryl Keech, Alexandra Rookes, Alan Treleaven.

A.  
POLICY

1. PHASE THREE REQUIREMENTS FOR STANDING (BAR ADMISSION COURSE SUBCOMMITTEE)

The Bar Admission Course Subcommittee, chaired by Donald Lamont, met on April 23, 1992. Included in its discussions was a review of the Director's draft Requirements for Standing to govern Phase Three of the Bar Admission Course for 1992. The draft Requirements for Standing were approved, subject to amendments. The revised Requirements for Standing: Phase Three 1992: 34th Bar Admission Course are attached (pages 1 - 7).

It is recommended that the Requirements for Standing: Phase Three 1992: 34th Bar Admission Course be approved.

Approved

2. PHASE ONE EXEMPTION POLICY (ARTICLING SUBCOMMITTEE)

The Articling Subcommittee, chaired by Marc Somerville, considered expanding the current policy regarding exemptions from Phase One at its April 24 meeting. The current policy, as approved by Convocation in March, 1992, is that students who have received a complete waiver of the articling term (Phase Two) are exempted from Phase One (the one-month teaching term).

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Six abridgment candidates recently wrote to the Articling Director requesting an exemption from Phase One. Three candidates are in the six-month abridgment category. Two of these candidates are lawyers with foreign jurisdiction practice experience and one candidate will be called to the Bar in British Columbia in August, 1992. The other three abridgment candidates are in the four-month abridgment category having between one to three years of practice experience in another Canadian province. The categories of possible abridgments are as set out in paragraph 14.0 of the Proposals for Articling Reform (pages 8 - 10).

The Articling Subcommittee considered the following options:

1. all abridgment candidates be required to complete Phase One;
2. all abridgment candidates be exempted from Phase One;
3. only those candidates with abridgments to four months be exempted from Phase One;
4. those candidates with abridgments to at least six months be exempted from Phase One.

The Subcommittee recognized the differences in Bar Admission Courses across Canada. In particular, not all provinces have teaching terms that are skills-based. The Subcommittee believes that requiring six-month abridgment candidates (usually those who have just been called to the Bar in another province) to take Phase One is reasonable.

The Subcommittee considered the purpose of Phase One, as articulated by the Director of Education. Phase One is a practice-oriented legal education and skills training program intended to provide candidates with an effective head start, not only to Phase Two (articling) but, together with Phase Two and Phase Three, to effective lawyering. Phase One is therefore much more than a program intended to prepare students for articling. It is an integral part of the Law Society's entire Bar Admission program, and provides an important base in lawyering-skills education for the more in-depth work that is done in Phase Three. The important skills taught in the six Phase One units (Professional Responsibility and Practice Management, Client Interviewing, Negotiation, Legal Writing and Drafting, Legal Research, and Advocacy) have an important application both to articling and to the practice of law.

After much discussion, the Articling Subcommittee agreed that only those with abridgments to four months (option three as above: those with at least one year practice experience in another Canadian province) should be exempted from Phase One. The rationale is that these individuals will have already developed practice and professional skills to an extent that Phase One would contribute little to the enhancement of their qualifications.

It is recommended that the current policy regarding exemptions from Phase One (the one-month teaching term) be expanded to include abridgment candidates who are granted an abridgment to four months.

Approved

29th May, 1992

3. PHASE ONE: APPLICABILITY TO STUDENTS WHO ARTICLED IN PRE-1990 BAR ADMISSION COURSE

A small number of students who articulated in or before the 1989-90 articling term deferred entry into the teaching term of the Bar Admission Course. In January of 1990 the Legal Education Committee and Convocation determined that all Bar Admission Course applicants must complete Phase One prior to entering Phase Three, including all students who had articulated under the former Bar Admission Course system but who had deferred the teaching term.

In light of exemptions which are now being granted from Phase One in prescribed circumstances (agenda item A-2 above), Mr. Kirk A.J. Rintoul requests reconsideration of the requirement that he complete Phase One.

Mr. Rintoul articulated in 1988-89, but deferred entry into the teaching term. His request is contained in his letter (page 11).

Mr. Rintoul, upon completing his articles in 1989, embarked on graduate law studies in England. Mr. Rintoul returned to Canada in early-1991. Mr. Rintoul has not completed a Bar Admission Course or articling in any other jurisdiction, and has not practised law in any other jurisdiction.

If Mr. Rintoul is required to complete Phase One of the Bar Admission Course prior to entering Phase Three, Mr. Rintoul will commence Phase One on August 4, 1992 and complete Phase One on August 28, 1992. He would begin Phase Three, following a one week break, on September 8, 1992.

It is recommended that students who articulated under the former Bar Admission Course system but who deferred entry into the teaching term of the Bar Admission Course be required to complete both Phases One and Three of the Bar Admission Course, and more specifically that Mr. Kirk A.J. Rintoul be required to complete both Phases One and Three of the Bar Admission Course.

C.  

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INFORMATION

1. CONTINUING LEGAL EDUCATION SUBCOMMITTEE

The Continuing Legal Education Subcommittee met on April 23, 1992. The following members were in attendance: Colin McKinnon (Chair), Colin Campbell, Susan Elliott, Marc Bode, Paul Perell, and Gary Watson. Staff in attendance were: Brenda Duncan, Cheryl Keech, Susan McCaffrey, and Alan Treleaven. The focus of the meeting was on Mandatory Continuing Legal Education, with extensive discussions on what the model might be.

The Chair and members of the Continuing Legal Education Subcommittee next attended the May 14 meeting hosted by the County and District Law Presidents' Association. The subject-matter of the meeting was Mandatory Continuing Legal Education.

The next meeting of the Subcommittee is scheduled on June 10, from 4:00 p.m. to 6:00 p.m.

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2. ARTICLING SUBCOMMITTEE

The Articling Subcommittee met on Friday, April 24, 1992. In attendance were Marc Somerville (Chair), Maurice Cullity, Stephen Goudge, Janne Burton, Jay Rudolph, and Victoria Colby. Staff attending were Marilyn Bode, Deborah Brown and Alan Treleaven.

The Subcommittee considered and granted two abridgment petitions.

The Subcommittee spent some time discussing the policy regarding exemptions from Phase One. Currently, only students exempted from articling (Phase Two) are not required to complete Phase One. However, six abridgment students had recently written to the Subcommittee also requesting exemption from Phase One. It was decided to recommend to the Legal Education Committee a policy expanding the category of those exempted from Phase One to include students who are given an abridgment to four months (agenda item A-2 above).

The Subcommittee gave conditional approval to another 25 principals who have applied to serve in the 1992/93 articling year. The applications of two members with a negative history with the Law Society were reviewed. Both members had a number of relatively minor recent complaints. After much discussion, their applications were approved.

The Subcommittee decided that articling principals who were approved for the 1992/93 articling year would have a somewhat simpler application process for the 1993/94 articling year. A reply card is being developed to forward to these principals. It will ask principals to indicate whether they are interested in serving again in the 1993/94 year, and whether there have been any changes in their history with the Law Society. If there are changes, details will be requested.

The Subcommittee considered and approved a draft form Evaluation of the Education Plan. Mid-term and end-term evaluations of the quality of the articling experience are required by principals and students. The draft form will be prescribed for students and principals.

The next meeting of the Articling Subcommittee is at 8:00 a.m. on Friday, May 29, 1992.

3. BAR ADMISSION COURSE SUBCOMMITTEE

The Bar Admission Course Subcommittee met on April 23, 1992. Members in attendance were Donald Lamont (Chair), and Daniel Kuzmyk. Staff in attendance were: Erika Abner, Sophia Sperdakos, and Alan Treleaven.

The Subcommittee reviewed the Director's draft Requirements for Standing: Phase Three 1992: 34th Bar Admission Course, and approved them subject to amendments (agenda item A-1 above).

The Subcommittee then discussed how Bar Admission Course examinations should be more closely linked to course content, and how the examinations should reflect both the legal skills and substantive law being dealt with in Phase Three. It was decided that the Director would draft a set of guidelines for the Heads of Section to assist in the setting of examinations which would complement what is being taught in the seminar rooms. It was also decided that the Director would supervise the role of the permanent Bar Admission Course Faculty in monitoring and advising on the effective application of the examination setting guidelines.

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Finally it was agreed that lecture content would be increased modestly in Phase Three, although the lecture content would continue to be significantly less than in the traditional Bar Admission Course. It was also decided that lectures ought not simply to repeat what is contained in the Reference Materials but should have a function of enriching and explaining what is contained in the Reference Materials.

4. ACCESS TO BAR ADMISSION COURSE FOR PRACTICE REVIEW PROGRAM PARTICIPANTS

Susan McCaffrey of the Professional Standards Department has informed the Director of Education that lawyers who are participating in the Practice Review Program would benefit from being able to attend the Bar Admission Course, and in particular Phase One where they could learn basic file and office management techniques and be exposed to an effective way of acting in various client matters. Ms. McCaffrey has requested that Phase One of the Bar Admission Course be available to lawyers participating in the Practice Review Program.

The Director of Education, after consultation with the Bar Admission Course Faculty, has decided that lawyers participating in the Practice Review Program will be able to enrol in Phase One of the Bar Admission Course in any session during which space is available, on condition that such lawyers pay the full Phase One tuition and complete all Phase One requirements, including attendance, participation and all assignments.

5. NATIONAL COMMITTEE ON LEGAL EDUCATION: PROFESSIONAL RESPONSIBILITY CONFERENCE

The National Committee on Legal Education, sponsored by the Federation of Law Societies of Canada and the Committee of Canadian Law Deans, is organizing a national conference on professional responsibility in the practice of law and in legal education to take place from October 29 to October 31, 1992 at the Palliser Hotel in Calgary, Alberta. The content of the program is currently being developed, and should be available shortly. The Director of Education is a member of the National Program Advisory Committee. The Director of Education will provide further information to the Committee when it is available.

ALL OF WHICH is respectfully submitted

DATED this 29 day of May, 1992

"D. Lamont"  
for Chair

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

- A-Item 1 - Director's draft Requirements for Standing: Phase Three 1992: 34th Bar Admission Course. (Numbered 1 - 7)
- A-Item 2 - Categories of Abridgments as set out in the "Proposals for Articling Reform". (Numbered 8 - 10)
- A-Item 3 - Letter from Mr. Kirk A.J. Rintoul dated March 9, 1991. (Number 11)

THE REPORT WAS ADOPTED

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29th May, 1992

ADMISSIONS COMMITTEE

Mr. Goudge presented the Report of the Admissions Committee of its meeting on May 14th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of May, 1992 at 9:30 a.m., the following members were present: Mr. Goudge (Chair), Messrs. Lamont and Spence.

A.  
POLICY

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1. ADMISSIONS HEARINGS - SUBCOMMITTEE FOR PROCEDURES

In November, 1991, the Committee embarked on a preliminary discussion of the necessity for procedures to be defined to govern the conduct of Admissions Hearings. During that discussion a number of issues were identified.

To assist the Committee's efforts in this direction, copies of the publication Law Society Discipline Proceedings were distributed at the April meeting for the Committee's information and comments.

At this meeting, the Committee struck a subcommittee to review these issues in detail and to make recommendations. The subcommittee members are Mr. Goudge and Mr. Strosberg.

B.  
ADMINISTRATION

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1. SPECIAL PETITION - READMISSION PROCEDURE

Herbert Sterling Stewart was called to the Bar on the 21st of March, 1969. He was disbarred by Convocation July 8, 1988. Mr. Stewart is applying for readmission to the Society following the usual procedures. The usual form of notice which applicants for readmission have been required to place in the Ontario Reports informs the profession of the nature and date of Convocation's decision. Mr. Stewart objected to the form of notice provided to him for this purpose and asked that he be granted permission to change the format of the notice, or be provided with an alternative form of notice, to be placed in the Ontario Reports.

The Committee confirmed that Mr. Stewart be advised that he must use the existing form provided to him by the Society for publication in the Ontario Reports regarding his application for readmission.

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2. DATES FOR SPECIAL CONVOCATIONS - 1993 CALL TO THE BAR

The Committee was asked to approve the following dates for Special Convocations for the call to the Bar of the graduates of the Bar Admission Course:

Friday, February 5th, 1993 - National Arts Centre, Ottawa

Monday, February 8th, 1993 - Radisson Hotel, London

Tuesday, February 9th, 1993 - Roy Thomson Hall, Toronto

Approved

3. DIRECT TRANSFER - COMMON LAW - REGULATION 4(1)

The following candidates have met all the requirements to transfer under Regulation 4(1). Both candidates were given permission to proceed by the Admissions Committee on the 12th of April, 1990. Business reasons prevented them from writing the transfer examinations within the required time frame and they now reapply for permission to proceed.

Steven Mark Cook  
John Norman Gregory

Province of British Columbia  
Province of British Columbia

Approved

4. EXAMINATION RESULTS

Statutes & Procedures in Ontario Transfer Examination

The results of the examination on the Statutes and Procedure in Ontario held in April 1992 are before the Committee:

The following candidates passed:

Monique Charlebois  
Patricia Lane  
Lynne Mulvenna

Two candidates failed.

Noted

5. CALL TO THE BAR AND CERTIFICATE OF FITNESS

(i) BAR ADMISSION COURSE

The following candidates expect to complete the 33rd Bar Admission Course in May, 1992 and wish to be called to the Bar and to be granted a Certificate of Fitness, at the Regular Convocation on May 29th, 1992:

Karin Hildegard Conradi  
David Anthony Wallbridge

These applications are approved conditional on the candidates successfully completing the course, filing the necessary documents and paying the required fee prior to May 29th, 1992.

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(ii) TRANSFER EXAMINATION

The following candidates having successfully completed the Bar Admission Transfer Examination, filed the necessary documents and paid the required fee, now apply for Call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on May 29th, 1992:

Monique Charlebois  
Lynn Mulvenna

Approved

(iii) ADMISSION OF STUDENTS-AT-LAW

The following candidates, having complied with the relevant Regulations, paid the required fee of \$101.00 and filed the necessary documents, now apply for admission to the Law Society as students-at-law in the Bar Admission Course:

Under Bar Admission Course Regulation 22(7)  
34th B.A.C. (Entering Articles 1991)

- |                                   |   |
|-----------------------------------|---|
| 60. Bhend, Stanley Pierre         | B.Sc. Texas, USA/84;<br>LL.B. Ottawa/91;                                      |
| 61. Bindoo, Ronnie Michael Louis  | Joint Committee on<br>Accreditation/91;                                       |
| 62. Biro, Peter Leslie            | B.A. Guelph/82;<br>M.A. McMaster/85;<br>B.C.L. McGill/91;<br>LL.B. McGill/91; |
| 63. Bisceglia, Emilio             | 2 yrs. Arts, York;<br>LL.B. York/91;  |
| 64. Blair, William D'Arcy Warwick | Mature Student;<br>LL.B. York/91;   |
| 65. Blumenthal, Brian Abraham     | B.A. Manitoba/86;<br>L.L.B. Calgary/90;                                       |
| 66. Boddez, Catherine Amanda      | B.A. Alberta/88;<br>LL.B. Toronto/91;   |
| 67. Boddy, Ian Charles            | B.A. Alberta/88;<br>LL.B. Western/91;   |
| 68. Bodi, James Alexander         | 2 yrs. Arts, Western;<br>LL.B. Western/91;                                    |
| 69. Boivin, Jean-Paul Daniel      | B.Sc. Ottawa/88;<br>LL.B. Ottawa/91;  |
| 70. Boivin, Joseph Denis Wilfrid  | B.Soc.Sc. Ottawa/89;<br>LL.B. Ottawa/91;                                      |
| 71. Bongard, Warren Mitchell      | B.A. York/88;<br>LL.B. Western/91;  |

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|---------------------------------------|---|
| 72. Bortolussi, Felicia Bridget       | B.A. Western/88;<br>LL.B. Western/91;                   |
| 73. Bosse, Andrea Heidi               | B.Comm. Alberta/88;<br>LL.B. York/91;                   |
| 74. Boucher, Jos Pierre Yves          | B.A. York/88;<br>LL.B. Ottawa/91;                       |
| 75. Bourassa, Joseph Danny Alain      | B.Sc. Montreal/85;<br>LL.B. Ottawa/91;                  |
| 76. Bowlin, Lisa Michelle             | B.A. St. Thomas/90;<br>LL.B. York/91;                   |
| 77. Boylan, Ursula Marie              | B.A. McGill/88;<br>LL.B. McGill/91;                     |
| 78. Brak, Sharon Elisabeth            | B.A. Guelph/88;<br>LL.B. Western/91;                    |
| 79. Brant, Robert James               | B.A. Western/88;<br>LL.B. York/91;                      |
| 80. Brethour, Patricia Anne<br>Parker | B.A. Western/87;<br>LL.B. Dalhousie/91;                 |
| 81. Brewer, Carla Jacqueline          | B.Comm. McGill/87;<br>LL.B. Windsor/91;                 |
| 82. Bridge, Norma Jean                | B.A. Queen's/78;<br>M.A. Waterloo/82;<br>LL.B. York/91; |
| 83. Brinac, Joseph                    | B.Sc. Western/88;<br>LL.B. Western/91;                  |
| 84. Brissenden, Rea Bernadette        | B.A. York/87;<br>LL.B. York/91;                         |
| 85. Bronson, Toby                     | B.A. Bethany, USA/88;<br>LL.B. Queen's/91;              |
| 86. Brown, Caroline Eva               | B.Sc. Toronto/88;<br>LL.B. York/91;                     |
| 87. Brown, Heidi Rachel               | B.A. Western/88;<br>LL.B. Western/91;                   |
| 88. Brown, Jeffrey Lorne              | B.A. McMaster/86;<br>LL.B. Toronto/91;                  |
| 89. Brown, Susan Ann                  | B.A. McMaster/88;<br>LL.B. Western/91;                  |
| 90. Bruce, Lesley Anne                | B.A. Queen's/88;<br>LL.B. Toronto/91;                   |
| 91. Bruni, Catherine Rose             | B.A. McGill/88;<br>LL.B. Western/91;                    |

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|---------------------------------|---|
| 92. Bryan, John Andrew          | B.A. Western/87;<br>LL.B. Western/91;                         |
| 93. Burgess, Susan Jane Coffin  | B.A. Carleton/68;<br>LL.B. Ottawa/91;                         |
| 94. Burke, Jennifer Marie       | B.Comm. Queen's/88;<br>LL.B. Ottawa/91;                       |
| 95. Burton, Mark Edward         | B.Sc. Queen's/86;<br>LL.B. Western/90;                        |
| 96. Bury, Michael Peter         | B.A. Toronto/88;<br>LL.B. Western/91;                         |
| 97. Bush, Stella Catherine      | B.A. Carleton/88;<br>LL.B. Windsor/91;                        |
| 98. Butala, Brigitte Monica     | B.A. McGill/88;<br>LL.B. British Columbia/91;                 |
| 99. Butler, Cyril David         | B.Sc. Carleton/85;<br>M.B.A. Queen's/88;<br>LL.B. Toronto/91; |
| 100. Buttery, Mary Iola Audna   | 2 yrs. Arts, Guelph;<br>LL.B. Windsor/91;                     |
| 101. Byberg, Leslie Joanne      | B.A. Western/88;<br>LL.B. Western/91;                         |
| 102. Byrne, Thomas Michael      | B.A. Wilfrid Laurier/88;<br>LL.B. Ottawa/91;                  |
| 103. Bytensky, Boris            | 2 yrs. Arts, Western;<br>LL.B. York/91;                       |
| 104. Cader, Paula Sharon        | B.A. Toronto/64;<br>LL.B. York/91;                            |
| 105. Cadieux, Ian Joseph Edward | 2 yrs. Arts, Ottawa;<br>LL.B. Ottawa/91;                      |
| 106. Callahan, Peter Murray     | B.A. Queen's/87;<br>LL.B. Windsor/91;                         |
| 107. Caminsky, Beverlie Ellen   | B.A. McGill/88;<br>LL.B. York/91;                             |
| 108. Campbell, Karen Hazel      | B.A. Western/88;<br>LL.B. Dalhousie/91;                       |
| 109. Campeau, Raymond Louis     | B.A. Ottawa/86;<br>LL.B. Moncton/91;                          |
| 110. Caplan, Barbara Joy        | Mature Student;<br>LL.B. York/91;                             |
| 111. Caragata, Sean Stephen     | B.A. Regina/88;<br>LL.B. Saskatchewan/91;                     |

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112. Carey, Ruth Janet	B.Sc.F. Toronto/85; B.A. Toronto/87; LL.B. Ottawa/91;
113. Carlton, Elizabeth Catherine	B.A. Bishop's/84; LL.B. Western/91;
114. Carr, Hamish Alan	B.Sc. Manitoba/87; LL.B. Manitoba/90;
115. Carroll, Catherine Ann	B.Sc. Toronto/82; B.S.W. McGill/85; M.S.W. McGill/86; LL.B. York/91;
116. Carson, Colin John	B.A. Queen's/88; LL.B. Queen's/91;
117. Carter, Donald Edward	B.A. York/88; LL.B. Queen's/91;
118. Cartwright, Meredith Ann	B.A. Queen's/87; LL.B. Queen's/91;
119. Caruso, Michael Peter	B.A. York/88; LL.B. Windsor/91;
120. Cassel, Robin Marie	3 yrs. Arts, McGill; LL.B. Queen's/91;
121. Castel, Jacqueline Ruth	B.A. Toronto/88; LL.B. Toronto/91;
122. Castelo, Anna Maria	B.A. Toronto/86; LL.B. Queen's/91;

Approved

C.  
INFORMATION

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1. REQUEST FOR SUBMISSIONS BY THE COMMUNICATIONS COMMITTEE CONCERNING THE DECIMA RESEARCH REPORT

A copy of the Decima Research report Public and Lawyers' Perceptions of and Attitudes Toward The Law Society of Upper Canada, Communications, Programs and Policy Issues was circulated to all Benchers by the Communications Committee earlier this month. The Communications Committee requested that the Admissions

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Committee consider whether there are matters arising from the Report that require consideration in Committee. The Communications Committee has indicated that it would appreciate suggestions or recommendations regarding future courses of action and would be pleased to assist Committees in implementation of the same.

Noted

ALL OF WHICH is respectfully submitted

DATED this 29th day of May, 1992

"S. Goudge"  
for Chair

THE REPORT WAS ADOPTED

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FINANCE AND ADMINISTRATION COMMITTEE

Mr. Howie presented the Report of the Finance and Administration Committee of its meeting on May 14th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs to report:

Your Committee met on Thursday, the 14th of May, 1992 at three o'clock in the afternoon, the following members being present: K.E. Howie (Chair), D.E. Bellamy (Vice Chair), J.J. Wardlaw (Vice Chair), T.G. Bastedo, R.C. Bragagnolo, D.H.L. Lamont, R.W. Murray, K.J. Palmer, P.B.C. Pepper, and M.P. Weaver. Also in attendance were D.A. Crosbie, R.F. Tinsley, D.E. Crack and D.N. Carey.

B.

ADMINISTRATION

1. FINANCIAL STATEMENTS - HIGHLIGHTS APRIL 30, 1992

A memorandum from the Director is attached. [pg. 9 - 11]

(a) General Fund & Lawyers' Fund for Client Compensation

(b) Errors & Omissions Insurance Fund

Approved

2. 1992/93 ANNUAL FEE

(a) Budget [pg. 18 - 22]

A memorandum from the Chair of the Finance and Administration Committee is attached which outlines the proposal for Annual Fees. It is recommended that the fees for the full fee paying members be as follows:

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	1992/93	COMPARATIVE 1991/92
General Membership	\$778	\$781
County Libraries	79	68
Lawyers' Fund For Client Compensation	1	1
Legal Aid	292	240
<b>TOTAL</b>	<b>*\$1,150</b>	<b>\$1,090</b>

\* \$1,200 if paid in two instalments

Approved

(b) Payments of Fees By Instalment

When the fees were set last year for the 1991/92 fiscal year, a commitment was made to consider the possibility of establishing an instalment program in order to alleviate the burden on the membership of increasing fees.

A preliminary schedule was proposed providing for staggered payments, so that the Annual Fees would be billed October 1st and March 1st and the Errors and Omissions Insurance Levy July 1st and January 1st. It was felt that this would spread the load, particularly for practising members, throughout the fiscal year.

In the meantime, the fiscal year of the insurance program has been changed to the calendar year while the fiscal year of the Society (the budget year) remains as July 1st to June 30th. Based on further deliberation, it is recommended:

- i. That the billing date for the annual fee be charged to coincide with the beginning of the fiscal year, July 1st.

There appears to be significant confusion in the membership with the present system which is that members receive a billing in September, due October 1st, with four months allowed to pay, for a fiscal year which commenced the previous July 1st. It would be desirable to have the billing dated the first day of the fiscal year, therefore coinciding closely with the setting of the budget.

This change to the billing date would be made in two stages. The annual billing this year would be due August 1st rather than October 1st and for the 1993/94 fiscal year it would be due July 1st.

- ii. That members be permitted to pay the annual fees in two instalments. Members would be encouraged to pay the full amount on July 1st but must pay at least half of the fee within four months of the due date to avoid suspension. The second instalment would be due January 1st, with the four month grace period to apply.
- iii. That the four month "grace" period be reduced to two months. This will require legislative amendment and this recommendation will be referred to the Legislation & Rules Committee for drafting of the appropriate amendments.
- iv. That the Society pursue a separate program for instalment payments for Errors and Omissions which would include monthly payments through a "direct debit system" with the banks commencing with the 1993 levy year.



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In other words, rather than the Society administering a program of instalment payments, members who wish to spread their Errors and Omissions Insurance levy over the fiscal year would enrol in a direct payment scheme through their bank. This is how most insurance companies operate, and is accompanied by a small charge for the privilege of using this scheme and a factor for interest cost.

- v. That the annual billing for annual fees and for Errors and Omissions Insurance levies not be integrated as has been previously proposed. There are several reasons for this change. Firstly, the Errors and Omissions Insurance program is on a calendar year as opposed to the Society's fiscal year. Secondly, the levy is subject to periodic adjustments due to changes in individual members' claims experience. Lastly, there may also be interim extra billings imposed in order to pay down the deficit which currently exists in the program.

Approved

3. LAW STUDENTS' CONSTITUTIONAL CONFERENCE

In February 1992, the Committee approved a payment of \$2,500 to help fund the Law Students' Constitutional Conference which took place in March. In a letter dated April 24, 1992, the National Chair, Mr. Alan Diner, informs us that out of \$42,300 total funds raised for this conference, there is surplus of approximately \$7,200. There is a second conference being planned for this fall at Sherbrooke University and Mr. Diner is asking all original sponsors of the first conference for permission to use this surplus for "seed money" for the second conference.

The Committee was asked to consider this request.

Approved

4. TREASURER'S HONORARIUM

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

As requested at the last Committee meeting, a survey of the policies of the various Law Societies concerning remuneration for the Treasurer (President) was completed as follows:

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

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

2 in the form of a gift on leaving office.

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

A motion was made to increase the honorarium to \$75,000 per year for in town treasurers and \$100,000 per year for out of town treasurers.

Defeated

Note: Motion, see page 24

#### 5. PENSION PLAN AMENDMENT

In September 1991, the Committee recommended and Convocation approved an amendment to the Society's pension plan to limit the employee contribution made under the plan to \$3,500 per employee. Therefore the employer match would also be limited.

The implementation of this amendment has proven more difficult to do than had been previously thought. The problem stems from the fact that the plan also covers employees of the Ontario Legal Aid Plan. Some of these employees are members of a union and the Pension Plan forms part of their collective agreement. In addition, it was found that at least two employees of the Legal Aid Plan had exceeded the limit by the time the amendment was approved. Therefore, management of the Legal Aid Plan proposed that the plan be split into two separate plans, one for the employees of the Law Society, the other for the employees of the Ontario Legal Aid Plan, each with the different levels of contribution, with the amendment applying only to the Law Society employees. Although a notice was sent out to Law Society employees, the Legal Aid Plan, because of its problems, did not notify its staff of the proposed amendment.

In further discussion, the Chair of Finance was of the view that having separate plans for Law Society employees and Legal Aid Plan employees could lead to unequal treatment for the two employee groups who were, in fact, both employees of the Law Society, and that we should, therefore, pursue the amendments despite the differences between the two employee groups.

There have been further meetings with the Deputy Director of Finance for the Ontario Legal Aid Plan, our counsel, Osler Hoskin & Harcourt, the Under Treasurer and the Chair of Finance. After lengthy review we are now of the opinion that the original amendment to limit the contributions be revised to permit the higher level of contributions that were actually made in respect of the Legal Aid Plan members for the 1991 calendar year. The Law Society would then pay a lump sum amount equal to the additional employer contribution that was not made in 1991 to Law Society Plan members to compensate such members. Affected members could deposit such contribution to their personal RRSPs in 1992 (subject to the RRSP deduction limits for 1992). The necessary documentation will be filed with the Pension Commission and Revenue Canada. A copy of the letter from Osler, Hoskin & Harcourt is attached. [pg. 24 - 26]

The result of this is that the contribution limits to the Pension Plan will rise in line with the limits now set by Revenue Canada. The financial impact of this for the Law Society is approximately \$18,000 for the 1991/92 fiscal year, \$12,000 of which applies to the General Fund.

Approved

#### 6. EMPLOYEE BENEFITS - RENEWAL

Sunlife of Canada has requested an increase in the premiums for the Society's group insurance. M.L.H. & A Limited, the Society's Benefits Consultants, have reviewed the proposals and have met with the Director of Finance and Administration of the Law Society and the Deputy Director of Finance of the Ontario Legal Aid Plan in negotiating these premiums.

The following table of monthly premiums shows the increases recommended:

	Current	Proposed	Increase	%
Life	\$3,008.64	\$3,760.80	\$752.16	25
A.D.D.	1,002.88	1,002.88	—	—
L.T.D.	2,688.73	2,957.59	268.86	10
Health	7,099.79	8,448.75	1,348.96	19
Dental	6,807.26	7,624.13	816.87	12
	<u>\$20,607.30</u>	<u>\$23,794.15</u>	<u>\$3,186.85</u>	<u>15</u>

29th May, 1992

Of this total, approximately \$2,000 is chargeable to the General Fund or \$24,000 per year. This amount was anticipated and is covered by the percentage used to calculate employee benefits in the budget.

Approved

7. PERMISSION FOR USE OF PREMISES - INSTITUTE OF LAW CLERKS OF ONTARIO

The Institute of Law Clerks of Ontario seeks permission to use Convocation Hall on June 24, 1992, for the purpose of a retirement dinner honouring Jim Bristow, a senior litigation law clerk at McCarthy Tetrault. Previously they have used the Legal Education facilities.

The Committee was asked to consider their request.

Approved

8. ELECTION OF HONOURARY BENCHER - LINCOLN ALEXANDER

The Secretary reports that the cost for the ceremonies for the election of Lincoln Alexander as Honourary Bencher will be \$7,500. Included in the costs are tent rental and reception costs.

The Committee was asked to approve this expenditure.

Approved

9. HOUSE COMMITTEE

A memorandum from the Chair of the House Committee was before the meeting requesting funding for the following items in the amounts indicated.

i.	New crystal	\$18,000
ii.	Design work for menus, placemats, etc.	\$4,000
iii.	Refurbish dishwasher to handle crystal.	\$5,000
iv.	Additional silverware	\$25,000

Denied

10. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 23 members who have not complied with the requirements respecting annual filing and who have not paid their late filing fee.

In all 23 cases all or part of the late filing fee has been outstanding four months or more. The 23 members owe \$34,170 of which \$11,840 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 23 members be suspended on May 29th, 1992 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see page 25

11. SUSPENSION OF MEMBERS - ERRORS AND OMISSIONS LEVY

There are 773 members who have neither paid their Errors and Omissions Insurance Levy nor filed a claim for exemption for the period January to June 1992. Four notices have been sent.

29th May, 1992

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on May 29, 1992.

Approved

Note: Motion, see page 26

12. MEMBERSHIP UNDER RULE 50

Retired Member

The following member is sixty-five years of age and fully retired from the practice of law, has requested permission to continue his membership in the Society without payment of annual fees:

James Duncan Otton

Newmarket

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

Approved

13. RETURN TO ACTIVE PRACTICE

Lorne Marshal Alter retired under the incapacitated section of Rule 50 on the 23rd of February 1990. He now submits an application for the termination of his retirement and submits medical evidence attesting to his ability to practice law.

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

Approved

14. RESIGNATION - REGULATION 12

(a) Ivan John Cable of Whitehorse, Yukon has applied for permission to resign his membership in the Society and has submitted a Declaration in support. He was called to the Bar on the 19th of March 1970 and has never practised law in Ontario. His rights and privileges were suspended on the 6th of March 1992 for his failure to pay the 1991/92 annual fees. Arrears of fees now total \$676.24. His annual filings are not up to date, he last filed on the 11th of November 1990. A late filing penalty of \$1010.00 has been applied. The member has requested that he be relieved of publication in the Ontario Reports.

(b) Malcolm Blake Ford of Victoria, British Columbia has applied for permission to resign his membership in the Society and has submitted a Declaration in support. He was called to the Bar on the 24th of March 1972. He has not been in private practice, his client in Ontario was the Ontario government, and he declares that all clients' matters have been completed and disposed of. He declares that he has not handled trust funds or other client's property. His rights and privileges were suspended on the 29th of May 1987 for his failure to pay the 1986/87 annual fees. Arrears of fees now total \$4834.26. His annual filings are up to date and the member requested that he be relieved of publication in the Ontario Reports.

29th May, 1992

(c) Ralph Gary Underwood of Waterloo, has applied for permission to resign his membership in the Society and has submitted a Declaration in support. He was called to the Bar on the 10th of April 1980. He practised law for 18 months, from April 1980 to October 1981. He declares that he has not handled trust funds since 1981, and that all trust funds dealt with during his practice have been accounted for and turned over to the persons entitled thereto. His rights and privileges were suspended on the 25th of February 1983 for his failure to pay the 1982/83 annual fees. Arrears of fee now total \$7884.83. His annual filings are up to date and the member requested that he be relieved of publication in the Ontario Reports.

(d) Hugh Clayton Cameron of St. Thomas, Ontario has applied for permission to resign his membership in the Society and has submitted a Statutory Declaration in support. Notice of his intention to resign appeared in the March 8, 1991 issue of the Ontario Reports. He was called to the Bar on June 29, 1950. He practised until February 20, 1991 and sold his practice on March 13, 1991. He declares all client matters have been completed and disposed. His annual fees for the years 1990/91 and 1991/92 have not been paid, as well, he last filed on December 31, 1989. Patricia Rogerson of the Staff Trustees Office assures us that his books are in order.

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

Approved

C.  
INFORMATION

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1. ADVOCATES' SOCIETY INSTITUTE - SUMMARY OF ACTIVITIES JANUARY TO MARCH 1992.

In approving the additional funding in support of the Advocates' Society Institute, the Society requested regular reporting on the operations of the Institute. The first of those reports for the quarter ended March 31, 1992, has been received.

Noted

2. LIFE MEMBER

Pursuant to Rule 49, the following is eligible to become a Life Member of the Society with an effective date of the 21st of May 1992:

Eileen Mitchell Thomas Ottawa

Noted

3. ROLLS AND RECORDS

(a) Deaths

The following members have died:

Raymond Algernon Jamieson Almonte	Called September 15th 1921 Died February 28th 1992
Gordon Anthony Heinrich Toronto	Called April 19th 1963 Died March 25th 1992
Alfred Meadows Ecclestone Toronto	Called June 20th 1940 Died April 3rd 1992

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John Roland Maurice Gautreau    Called February 20th 1959  
London                                Died April 4th 1992

Robert James Burgess                Called April 11th 1983  
Wallaceburg                          Died April 9th 1992

Hugh Paterson Innes                 Called January 19th 1928  
Simcoe                                Died April 21st 1992

John Alexander Gordon               Called June 28th 1956  
Toronto                                Died May 2nd 1992

Noted

(b)    Permission to Resign

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

Michael Frank Stoyka                Called March 21st 1969  
Windsor                                Permitted to Resign - Convocation  
   April 23rd 1992

Noted

(c)    Membership in Abeyance

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

Rosalie Silberman Abella            Called March 24th 1972  
Toronto                                Appointed to the Ontario Court of  
   Justice  
   General Division  
   March 12th 1992

Lloyd Michael Budzinsky             Called March 26th 1971  
Etobicoke                              Appointed to the Ontario Court  
   Provincial Division  
   April 1st 1992

Mary Lynne Hogan                    Called March 22nd 1974  
Toronto                                Appointed to the Ontario Court  
   Provincial Division  
   April 27th 1992

Noted

29th May, 1992

4. LEGAL MEETINGS AND ENTERTAINMENT

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

June 15, 1992	Min. of Consumer Affairs Barristers Lounge
June 17, 1992	Tory Tory Reception Convocation Hall
June 23, 1992	City of Toronto Barristers Lounge

Noted

ALL OF WHICH is respectfully submitted

DATED this 29th day of May, 1992

"K. Howie"  
Chair

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

- B-Item 1 - Memorandum from Mr. David E. Crack to the Chair and Members of the Finance Committee dated May 14, 1992 re: Financial Statement Highlights. (Numbered 9 - 17)
- B-Item 2 - Memorandum from Mr. Kenneth E. Howie, Chair, Finance and Administration to The Treasurer and Benchers dated May 21, 1992 re: 1992/93. (Numbered 18 - 22)
- B-Item 3 - Letter from Mr. Alan Diner, National Chair, Law Students Constitutional Conference, to Mr. David E. Crack dated April 24, 1992. (Number 23)
- B-Item 5 - Letter from Mr. Thane P. Woodside, Osler, Hoskin & Harcourt to Mr. David Crack dated May 13, 1992 re: The Pension Plan for Employees of the Law Society of Upper Canada (the "Plan"), Our File No. 1095390. (Numbered 24 - 26)

It was moved by Allan Rock, seconded by Joan Lax that Item 4 under Administration, re: Treasurer's Honorarium, be deferred and be brought back to Convocation before the end of the next Treasurer's term.

Carried

It was moved by Mary Weaver that the Treasurer's Honorarium be increased to \$75,000.

Not Put

The Chair asked that Item 11 under Administration re: Suspension - Errors and Omissions Levy, be amended by changing the suspension date from May 29th to June 5th, 1992.



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It was moved by Don Lamont, seconded by Roger Yachetti that the annual fees be held to the same amount as last year.

Lost

It was moved by Kenneth Howie, seconded by James Wardlaw that Amendment No. 2 of the Pension Plan for Employees of The Law Society of Upper Canada be approved as set out in the letter from Osler, Hoskin & Harcourt dated May 28th, 1992.

Carried

(see letter in Convocation file)

THE REPORT AS AMENDED WAS ADOPTED

.....

MOTION: ANNUAL FEES FOR 1922/93

It was moved by Kenneth Howie, seconded by James Wardlaw THAT the Annual Fees for the financial year July 1st, 1992 to June 30th, 1993 for each of the three new classes of members be as follows:

	<u>If One Instalment</u>	<u>If Two Instalments</u>
Category 1	\$1,150	2 @ \$600 = \$1,200
less 50% reduction for Category 2	\$ 575	2 @ \$300 = \$600
less 75% reduction for Category 3	\$ 288	2 @ \$150 = \$300

Carried

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

It was moved by Kenneth Howie, seconded by James Wardlaw THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from May 29, 1992 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(See list in Convocation file)

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MOTION TO SUSPEND: FAILURE TO PAY ERRORS AND OMISSIONS INSURANCE LEVY

It was moved by Kenneth Howie, seconded by James Wardlaw THAT the rights and privileges of each member who has neither paid the Errors and Omissions Insurance levy which was due on January 1, 1992 nor filed an approved application for exemption from coverage and whose name appears on the attached list, be suspended from June 5, 1992 for one year and from year to year thereafter or until an application for exemption has been approved or the necessary levy has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer. Carried

(See list in Convocation file)

.....

CALL TO THE BAR

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

Karin Hildegard Conradi	33rd Bar Admission Course
Karen Lillian Deland	33rd Bar Admission Course
Charlene Violet Lonmo	33rd Bar Admission Course
Monique Jeanne Marie Charlebois	Transfer, Province of Quebec
Elizabeth Lynne Mulvenna	Transfer, Province of Alberta

.....

DISCIPLINE COMMITTEE

Mr. Rock presented the Report of the Discipline Committee of its meeting on May 14th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of May, 1992, at four-thirty in the afternoon, the following members being present:

A. Rock (Chair), P. Peters, D. Bellamy, A. Cooper, N. Finkelstein, C. McKinnon, D. Murphy, R. Murray; S. Kerr, G. MacKenzie, D. Robertson, J. Varro, and J. Yakimovich also attended.

A.  
POLICY

1A. ADVANCE PUBLICATION OF INFORMATION  
RESPECTING DISCIPLINARY PROCEEDINGS

At its April 24, 1992 session, Convocation agreed to reopen discussion on the issue of advance publication of disciplinary proceedings so that the concerns expressed at your Committee's and the Communication Committee's April meetings could be considered. The concerns arose from the decision at the March Convocation, when the recommendation of the Committee on the publication issue

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to maintain the current practice of the Society to provide summaries of complaints was considered. Convocation rejected the Committee's recommendation and adopted the recommendation of its sub-Committee which proposed a new method of disclosing such information through release of the actual sworn complaints.

At the April Convocation, the decision was made to appoint a joint sub-committee of the Committee and the Communications Committee on the advance publication issue, which reported to the Committee at its May, 1992 meeting.

In the course of its discussions, the Joint sub-Committee examined the advantages and difficulties presented by the options under consideration.

Among other things, the Joint sub-Committee considered:

- i) the limited extent to which the analogy provided by criminal proceedings (where a court docket lists the accused and sometimes the charges faced by the accused) is helpful, having regard to the fact that, in the language of the criminal model, the Society fulfills the function of the police, the prosecutor and the judge;
- ii) the editorial reaction to the initial decision by Convocation to abandon the provision of summaries and to provide, instead, copies of the actual complaints issued against lawyers; in this regard, it was noted that the Law Times spoke in favor of the change while some (notably the Ottawa Citizen) criticized the Society's decision based on an erroneous statement of the facts;
- iii) the damage caused to solicitors on those past occasions when the summaries were either inaccurate or inaccurately reported;
- iv) the risk of unfairness to lawyers that might occur if only the complaints are released, since those complaints may contain client names and often reflect particulars or grounds of complaint that may not be proceeded with at the hearing for a number of reasons, including consideration of the state of the evidence at that time;
- v) information from the Society's Director of Communications that of approximately 600 news reports concerning discipline matters arising in the last year, only 52 were news stories printed in advance of the hearing before a panel, and some of those 52 may have been multiple reports concerning the same solicitor; and
- iv) the potential administrative burden on and cost to the Society which may arise, if only actual complaints were supplied, in forwarding this information to the media or, if it were not sent but made available at the Society's offices, in answering what could become multiple telephone enquiries from the media on a monthly basis about actual complaints.

The Joint sub-Committee considered and rejected the suggestion that a distinction might be drawn at present between two categories of offence: those in which significant professional misconduct allegations are made and those in which merely technical or administrative infractions are alleged, such as failure to file accounting forms or failure to respond to correspondence from the Society. The Joint sub-Committee rejected the suggestion for the following reasons:

- 1) The Committee is recommending to Convocation this month that legislative changes be sought to distinguish between professional misconduct and administrative infractions. Until that legislation is in place, there is no rational or legal basis for distinguishing between one category or another of professional misconduct;

29th May, 1992

- 2) To adopt a distinction at this time between "major" and "less serious" misconduct would obligate some person or persons within the Society to decide on a continuing basis whether particular cases fell into one category or the other. That process would necessarily involve a degree of subjectivity and judgment. In the absence of a clear legal and rational basis for such a distinction (such as, for example, the proposed legislation) such judgments cannot properly be made, and would, in any event, leave the Society open to the criticism that public attention was being drawn away from certain lawyers and their alleged offenses.

The Joint sub-Committee recommended to the Committee and the Communications Committee a return to the practice of preparing and releasing summaries of forthcoming discipline hearings, rather than simply releasing copies of the actual complaints. The Joint sub-Committee was persuaded in the final analysis that that practice is more likely to result in fair and accurate reporting of discipline matters involving individual lawyers and that ultimately the Society must take responsibility to ensure that information published is accurate. The Committee agreed with the Joint sub-Committee's recommendation.

Your Committee therefore recommends that Convocation approve the return to and continuation of the preparation of the release of summaries of disciplinary complaints and continuation of the practice of making available sworn complaints on request.

2A. VICTIM IMPACT STATEMENTS AND REPRESENTATION  
OF COMPLAINANTS AT DISCIPLINE HEARINGS

At its January, 1992 meeting your Committee considered the request of counsel for a complainant in a disciplinary proceeding to make submissions on behalf of his client before Convocation relating to the impact of the solicitor's alleged misconduct on the complainant's mental health and financial well-being. After dealing with the specific request of counsel, the Committee discussed the broad policy question of whether "victim impact statements" ought to be permitted in disciplinary proceedings.

Staff were requested to formulate a specific written policy for discussion after reviewing and considering the practice in place in the criminal courts.

The Committee reviewed a memorandum prepared by Gavin MacKenzie, Senior Counsel - Discipline, with the assistance of Colin McKinnon.

With respect to the experience in the criminal courts, the Committee has advised that the Criminal Code was amended to specifically permit the use of victim impact statements in the sentencing process. Sub-sections 735(1.1) and (1.2) of the Criminal Code provide that in determining sentence, the court may consider a statement of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

Some of the issues raised in criminal cases and in the literature concerning the use of victim impact statements in criminal cases include:

1. whether, in addition to providing factual evidence about the consequences of the offence, the victim should be entitled to make submissions as to sentence personally or through counsel;
2. whether the accused should be entitled to refute evidence in a victim impact statement by cross-examination and by adducing other evidence; and

3. whether the use of victim impact statements distorts the criminal justice system by introducing a mood of emotionalism and by punishing differently offenders who are guilty of similar offenses depending not upon the nature of their unlawful acts, but upon the consequences of those acts upon other victims or, in homicide cases, upon those left behind to mourn.

The courts have held that victims of crimes are not entitled to make submissions in person or through counsel independently of those which the Crown chooses to advance, and that unless the accused consents to the introduction of a written victim impact statement, evidence of the effect of the accused's offence on a victim must be called viva voce, with the usual rights of cross-examination and the calling of rebuttal evidence.

Having considered and discussed this information, your Committee recommends that Convocation adopt the following proposal for the use of victim impact statements in disciplinary proceedings:

1. Discipline hearing panels and, where applicable, Convocation should consider evidence tendered concerning the effect of lawyers' professional misconduct on victims of that misconduct in formulating recommendations and decisions as to penalty.
2. The appropriate stage of disciplinary proceedings at which such evidence should be received is the penalty phase of hearings before discipline hearing panels. Convocation should not as a rule receive such evidence.
3. The Law Society's counsel should decide after consulting with victims and their counsel whether the discipline hearing panel should be asked to receive such evidence.
4. Where such evidence is led, it should be confined to factual statements by victims, without argument, describing the effects of the solicitor's misconduct.
5. The evidence may be introduced in the form of a written statement agreed upon by the solicitor's counsel and the Society's counsel (who will consult with victims and their counsel in the preparation of the statement). Where counsel cannot agree on a written statement, the Society's counsel may lead evidence as to the effect of the solicitor's misconduct on victims viva voce. Where viva voce evidence is introduced, it should be subject to cross-examination and rebuttal.
6. In their capacity as witnesses, victims who give evidence about the effects of a solicitor's misconduct are entitled under Section 11 of the Statutory Powers Procedure Act to be advised by counsel as to their rights, but their counsel are not entitled to take any other part in the hearing without leave of the discipline hearing panel. Carriage of the proceeding should remain throughout with the Society's counsel, who should lead victims' evidence in chief in cases in which victims testify.
7. Where evidence is introduced in either written form or viva voce, the discipline hearing panel should consider that evidence in formulating its decision or recommendation as to penalty and should report upon the evidence to Convocation in the usual fashion in cases in which a reprimand in Convocation or a harsher penalty is recommended.

3A. PUBLIC COMMENT BY BENCHERS ON DISCIPLINE DECISIONS

Your Committee has authorized the Chair to appoint a sub-committee to examine the extent to which Benchers, both as a matter of law and as a matter of policy, should comment publicly on discipline decisions, including decisions of Convocation with respect to penalty.

Issues which the sub-committee intend to examine include the following:

1. whether a distinction should be drawn between the freedom of Benchers to offer public comment on issues of general policy and their freedom to comment on issues arising in particular discipline cases, in which Benchers serve in a quasi-judicial capacity;
2. whether a distinction should or can be drawn between issues of discipline policy which arise in the context of individual cases and issues (such as the appropriateness of the penalty imposed) which arise in individual cases which do not raise broader policy questions;
3. whether there is a need to address the issue of confidentiality of information obtained by Benchers in the course of a disciplinary proceeding;
4. whether there are authorities which address the issues; and
5. whether the Rules of Professional Conduct and the Commentaries thereto are of assistance in resolving the issues.

4A. ACTION ARISING FROM THE TRANSITIONS REPORT

The sub-Committee of your Committee studying issues arising from the Transitions Report completed its deliberations and prepared a report which was considered at the Committee's May, 1992 meeting. The sub-Committee was appointed pursuant to the Committee's action on a recommendation in the Transitions Report itself, adopted by Convocation in April, 1991, that the Chair of every standing committee of Convocation be asked to consider whether there were any matters arising from the Report that required consideration in committee.

The sub-Committee reviewed the report in detail and listed, by way of a brief description, those matters which it interpreted as being of interest to the Committee referred to in the report. Furthermore, it identified certain specific subjects which merited further consideration and perhaps research with a view to determining whether the policies of the Law Society are adequate to meet the concerns past, present or future in these areas.

The sub-Committee recommended that the Committee identify those areas which would qualify for further study and consider whether the study should be undertaken by the Committee, the Women in the Legal Profession Committee, or any other committee of the Society.

Your Committee decided that the sub-Committee's findings should be referred to staff so that they may identify those matters which require further research and analysis and provide information to the Committee on how these issues may impact on the discipline process. Staff will be reporting to the Committee at a future date.

5A. MINOR DISCIPLINARY OFFENSES

The Yachetti Committee, with respect to reform of the discipline process, has recommended that the Law Society Act be amended to create a class of minor offenses which may be dealt with by a single Benchers. As a result of correspondence received by the Chair from Mr. James Wardlaw, your Committee was asked to consider whether, given this new class of offence, further amendments should be made to the legislation so that a member may be found guilty of an offence other than professional misconduct or conduct unbecoming a barrister and solicitor.

At present, Sections 34 and 37 of the Law Society Act empower Convocation or a committee of Convocation respectively to discipline only members who are found guilty of professional misconduct or conduct unbecoming a barrister and solicitor. Gavin MacKenzie, Senior Counsel - Discipline, opined that he did not think that a committee may find a member guilty of any lesser offence under the legislation as currently framed.

Mr. Wardlaw indicated in his letter that, given that many complaints that come before panels involve relatively minor matters, such as failure to file forms, it would be appropriate to devise a complaint that alleges that a solicitor is in contravention of the Law Society Act, or the regulations to the Act and, if necessary, find him or her guilty of that offence.

Mr. MacKenzie advised that traditionally, professional misconduct was defined by the courts as conduct which would reasonably be regarded by members of the profession as disgraceful, dishonourable, or unprofessional. Since law societies began adopting rules of professional conduct, certain types of behaviour which would not traditionally have fallen within this definition such as failing to serve clients conscientiously and failing to reply to communications from the Society have been the subject of findings of professional misconduct. Mr. MacKenzie suggested that Mr. Wardlaw's proposal be pursued.

After considering the above, the Committee agreed that it would be appropriate to act on this suggestion. Your Committee therefore recommends that the legislative changes proposed by the Society to date respecting disciplinary matters be elaborated upon to provide for a separate category of charges in distinction to professional misconduct and conduct unbecoming a barrister and solicitor to be known as administrative infractions, including such conduct as failure to file forms and failure to reply to the Law Society. The Committee further recommends that once Convocation adopts the recommendation, this matter be referred to the Reforms Implementation Committee for integration with the legislative package being referred to Queen's Park.

B.  
ADMINISTRATION

1B. KARLA KATHLEEN GOWER -  
PERMISSION TO EMPLOY HER AS A LEGAL SECRETARY

Mary T. Satterfield, a member of the Society, has requested the permission of Convocation pursuant to Rule 20 to employ Karla Kathleen Gower as a legal secretary.

29th May, 1992

Ms. Gower was suspended by Convocation on April 23, 1992 for one year after she was found guilty of professional misconduct. Her suspension thereafter continues until she is certified as competent by a psychiatrist acceptable to both her and the Law Society to resume the practice of law. Ms. Gower's misconduct involved fraud relating to real estate transactions, misleading clients, conflict of interest, and falsification of documents.

Ms. Satterfield is a sole practitioner but practises in association with two other lawyers, all of whom practise family law and who provide supervision to all secretarial and student staff in her absence and read all correspondence and pleadings on her behalf and sign documents on her behalf. She advises that she has retained co-counsel on two major files and that this person is also available to provide supervision on those files.

Ms. Satterfield has advised the Committee that she has already discussed in detail with Ms. Gower, if permission is granted, the work that she can and cannot undertake, and she is satisfied that Ms. Gower understands the limitations clearly. Ms. Satterfield has given her assurances that Ms. Gower will be carefully supervised. She advises that Ms. Gower needs the income and that Ms. Satterfield is in need of the services of a part-time secretary during her absence for a vacation, at which time her regular senior legal secretary requires typing assistance.

Gavin MacKenzie, Senior Counsel - Discipline, advised the Committee that Ms. Satterfield is known in the legal community as a respected and responsible member.

After considering the information before it, your Committee recommends that Convocation approve Ms. Satterfield's request to hire Ms. Gower as a legal secretary.

C.  
INFORMATION

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1C. AUTHORIZATION OF DISCIPLINE CHARGES

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

The following table shows the number of requests made by Discipline and Complaints staff for the month of April 1992.

	<u>Sought</u>	<u>Obtained</u>
Discipline	10	10
Complaints	9	9



29th May, 1992

Total number of charges authorized to date for 1992

January	20
February	16
March	31
April	<u>19</u>
Total:	86

ALL OF WHICH is respectfully submitted

DATED this 29th day of May, 1992

"A. Rock"  
Chair

It was moved by James Wardlaw, seconded by Mary Weaver, that the Law Society follow a procedure of only posting on the day of discipline hearings a hearing list outside the discipline room listing those solicitors who are to appear before the committee together with a description of the professional misconduct alleged.

Lost

It was moved by Dan Murphy, seconded by James Wardlaw that Senior Counsel - Discipline be authorized not to publish names of lawyers who are involved in "minor administrative infractions".

Lost

THE REPORT WAS ADOPTED

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#### ORDERS

The following Orders were filed with Convocation.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Herman Julius Melnitzer, of the City of London, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

#### O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of March, 1992, in the presence of Counsel for the Society, and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of conduct unbecoming a barrister and solicitor and having heard Counsel aforesaid;

29th May, 1992

CONVOCATION HEREBY ORDERS that Herman Julius Melnitzer be disbarred as a Barrister and that his name be stuck off the Roll of Solicitors and that his membership in the said Society be cancelled.

DATED this 26th day of March, 1992

"James M. Spence"  
Treasurer

(SEAL - Law Society of Upper Canada)

Richard F. Tinsley  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Paul Hubert Watson,  
of the Regional Municipality of  
Ottawa-Carleton, a Barrister and  
Solicitor (hereinafter referred to as "the  
Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 22nd day of January, 1992, in the presence of Counsel for the Society, the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Paul Hubert Watson be suspended for one month definite and thereafter until such time as all of the filings are in order.

DATED this 26th day of March, 1992

"James M. Spence"  
Treasurer

(SEAL - Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

29th May, 1992

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF James Douglas Leith Ross, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 25th day of February, 1992, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that James Douglas Leith Ross be suspended for one month from March 26th, 1992 and thereafter indefinitely until a Committee of Convocation finds that he is capable of practising law.

DATED this 26th day of March, 1992

"James M. Spence"  
Treasurer

(Seal - Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF William Gordon Winsor, of the City of North York, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 7th day of November, 1991, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

29th May, 1992

CONVOCATION HEREBY ORDERS that William Gordon Winsor be suspended for a period of six (6) months, such suspension to take effect on April 1st, 1992.

DATED this 26th day of March, 1992

"James M. Spence"  
Treasurer

(SEAL - Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF John Kenneth Henry Stiff, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 2nd day of March, 1992, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that John Kenneth Henry Stiff be Reprimanded in Convocation.

DATED this 26th day of March, 1992

"James M. Spence"  
Treasurer

(SEAL - Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

29th May, 1992

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Alan Stanley Franklin, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 28th day of February, 1992, in the presence of Counsel for the Society, and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct, and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Alan Stanley Franklin be Reprimanded in Convocation.

DATED this 26th day of March, 1992

"James M. Spence"  
Treasurer

(SEAL - Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 10th day of March, 1992, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

29th May, 1992

CONVOCATION HEREBY ORDERS that Peter Zinko be granted permission to resign, such resignation to commence on the 22nd day of July, 1992.

DATED this 26th day of March, 1992

"James M. Spence"  
Treasurer

(SEAL - Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Lee Edward Ward,  
of the Town of Carleton Place, a  
Barrister and Solicitor (hereinafter  
referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 20th day of November, 1991, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Lee Edward Ward be suspended for a period of two (2) months, such suspension to commence on the 1st day of July, 1992.

DATED this 26th day of March, 1992

"James M. Spence"  
Treasurer

(SEAL - Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

29th May, 1992

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Michael Frank Stoyka, of the City of Windsor, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 15th day of April, 1992, in the presence of Counsel for the Society, and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Michael Frank Stoyka be granted permission to resign his membership in The Law Society of Upper Canada, such resignation to take effect the 23rd day of April, 1992.

DATED this 23rd day of April, 1992

"James M. Spence"  
Treasurer

(SEAL - Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David Arthur Stevens, of the Town of Dundas, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 5th day of March, 1992, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

29th May, 1992

CONVOCATION HEREBY ORDERS that David Arthur Stevens be Reprimanded in Convocation and that the Solicitor pay the costs of the Law Society's investigation in the amount of \$378.16.

DATED this 23rd day of April, 1992

"James M. Spence"  
Treasurer

(SEAL - Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Ernest Arthur Dyck,  
of the City of Toronto, a Barrister  
and Solicitor (hereinafter referred to as  
"the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 22nd day of March, 1992, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Ernest Arthur Dyck be Reprimanded in Convocation and pay costs in the amount of \$2,500.00 and that the Solicitor undertake to co-operate with the Professional Standards Programme and complete any remedial programme or other requirements that are prescribed for him after the assessment by the Professional Standards Committee.

DATED this 23rd day of April, 1992

"James M. Spence"  
Treasurer

(SEAL - Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed



29th May, 1992

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 9th day of April, 1992, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Natalie Bronstein be suspended for a period of six (6) months definitely and thereafter until she is certified as competent to practise by a psychiatrist acceptable to both the Law Society and the Solicitor;

- that she immediately release custody and control over all client files presently under her control;
- that she enter into a payment plan acceptable to herself and the Law Society for the repayment of the \$18,264.85 presently outstanding by way of Errors & Omissions deductibles and that her failure to abide by its terms be a consideration in the assessment of her fitness for return to practise;
- that she co-operate with the Staff Trustee in winding up her practice;
- that she co-operate with the Practice Advisory Service and the Professional Standards Department in implementing the recommendations contained in the February 11, 1992 report of Susan McCaffrey at the resumption of her practice and any other suggestions that the Practice Advisory Service and the Professional Standards Department might make; and
- that she advise the Ontario Grievance Settlement Board of her Undertaking not to practise and any suspension of her right to practise was imposed by Convocation.

DATED this 23rd day of April, 1992

"James M. Spence"  
Treasurer

(SEAL - Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

29th May, 1992

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Karla Kathleen Gower, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 14th day of February, 1992, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Karla Kathleen Gower be suspended for a period of one (1) year definite and thereafter until she is certified as competent by a psychiatrist acceptable to both the Law Society and the Solicitor to resume the practise of law.

DATED this 23rd day of April, 1992

"James M. Spence"  
Treasurer

(SEAL - Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

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SPECIAL COMMITTEE ON THE INCORPORATION OF LAW PRACTICES

Mr. Cullity presented the Report on the Special Committee on the Incorporation of Law Practices.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE SPECIAL COMMITTEE ON THE INCORPORATION OF LAW PRACTICES begs leave to report:

I : INTRODUCTION

On June 28, 1990, Royal Assent was given to legislation which permits the practice of law by a corporation. The relevant provisions will not come into force until they are proclaimed. The act presupposes that regulations will be made to deal with a variety of matters including the procedures for obtaining certificates of authorization, the conditions that may be attached to such

certificates and the disposition and voting of shares owned by former or suspended members of the Law Society.

On September 7, 1990, Convocation established a Special Committee on the Incorporation of Law Practices. Its members were: Maurice Cullity (Chair), John Ground and Bruce Noble. Mr. Noble was subsequently appointed a judge of the Ontario Court (General Division). In September 1991 Convocation reconfirmed the membership of Mr. Cullity and Mr. Ground. The major recommendations of this report were decided upon before Mr. Ground was appointed a judge of the Ontario Court (General Division) in November 1991.

The report is based upon preliminary work undertaken for the Special Committee by a staff working group comprising Jim Yakimovich (Director, Department of Audit Investigation), Don Godden (Staff Lawyer, Practice Advisory Service), Andrew Brockett (Research Director). It is directed exclusively at the amendments to the regulations under the *Law Society Act* and other matters that need to be addressed before the legislation can be implemented. The report does not canvass the advantages and disadvantages of incorporation for practitioners.

Throughout the discussions which have led to the recommendations in this report your Committee has been guided by the principle that regulation of law corporations should be kept to a minimum, subject only to the Law Society's obligations to the profession and to the public at large. In particular, your Committee is of the view that the Law Society should, as far as possible, avoid interfering in business matters that are best handled by the directors of a corporation.

Among the matters that need to be addressed before the Law Society is ready to regulate the practice of law by corporations there are some that fall within the terms of reference of various Standing Committees of Convocation. Your Committee is of the view that such matters should be referred to the appropriate Standing Committees. They are listed in a later section of this report. Some of these matters will need to be addressed before the legislation can be implemented.

In general, your Committee has interpreted its mandate as being to draft regulations within the wording of the legislation as it currently exists and not to suggest amendments to the *Law Society Act*. Your Committee is satisfied that the Law Society will be able to regulate the practice of law by corporations if the regulatory scheme proposed in this report is put in place. The report does, however, recommend two minor amendments to the *Law Society Act*: it is submitted that it would be appropriate for Convocation to consider these proposed amendments after the existing legislation has been proclaimed in force.

The possibility of practising law through a corporation may also require amendments to statutes other than the *Law Society Act*. Your Committee has asked the Research Director of the Law Society to review this matter. If it appears that changes are needed to other statutes, your Committee will report accordingly to Convocation.

## II : BACKGROUND

### The prohibition against practising law through a corporation

Until the provisions of Bill 45 are proclaimed in force, a corporation may not practise law in Ontario.

Subsection 3(1) of the *Business Corporations Act*, 1982, R.S.O. 1990, c. B.16, states:

Where the practice of a profession is governed by an Act, a corporation may practise the profession only if that Act expressly permits the practice of the profession by a corporation and subject to the provisions of such Act.

Subsection 50(1) of the *Law Society Act*, R.S.O. 1990, c. L.8, states:

Except where otherwise provided by law, no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold himself, herself or itself out as or represent himself, herself or itself to be a barrister or solicitor or practise as a barrister or solicitor.

One of the main objections to the incorporation of law practices has been the limitation on the liability of shareholders of a corporation. Subsection 92(1) of the *Business Corporations Act*, provides:

The shareholders of a corporation are not, as shareholders, liable for any act, default, obligation or liability of the corporation except under subsection 34(5), subsection 108(5) and section 243.

It appears to be generally accepted that the liability of a lawyer towards clients should not be thus limited.

#### Alberta and British Columbia

In 1975, Alberta became the first province to permit the practice of law through a corporation. In 1988, legislation was enacted in British Columbia, allowing for the practice of law through corporations in that province. The provisions governing the incorporation of law practices in Alberta and British Columbia are to be found in Part 8 of the *Legal Profession Act*, R.S.A. 1980, c. L-9.1, and Part 11 of the *Legal Profession Act*, R.S.B.C. 1987, c. 25, respectively. The main elements of the two schemes are as follows:

- in order to practise law, a corporation must hold a permit issued by the law society;
- directors of the corporation must be active members of the law society;
- voting shares may be held only by active members of the law society (in British Columbia, voting shares in a "Law Corporation" may be held by a "Personal Law Corporation" but voting shares of the latter may be held only by a member of the law society);
- non-voting shares may be held by:
  - (i) members of the law society; and
  - (ii) certain family members either of voting shareholders (Alberta) or of members who are shareholders (B.C.);
- in Alberta, non-voting shares may also be held by a trustee holding shares in trust for the benefit of individuals who are permitted to hold non-voting shares;
- there are specific statutory provisions intended to ensure that shareholders and employees of law corporations are liable to clients of the corporation for professional negligence.

Alberta and British Columbia are still the only provinces which permit the incorporation of a law practice. Discussions are understood to be under way in Québec with a view to preparing the necessary legislation.

In Alberta, on July 1, 1991, the active membership of the Law Society numbered 5,068. There were, at that date, 1,281 active corporations and 511 inactive corporations (corporations which had allowed their permits to lapse). Of the 1,281 active corporations, there was only one which had more than one voting shareholder. In other words, all but one of the active corporations were single-member corporations. Of the 511 inactive corporations, only three had more than one voting shareholder.

In British Columbia, on August 1, 1991, the active membership of the Law Society numbered 7,068. There were, at that date, 272 Personal Law Corporations (law corporations having only one voting shareholder) and 57 Law Corporations (corporations having more than one voting shareholder).

#### The three earlier Special Committees on the Incorporation of Law Practices

In May 1977, the Law Society of Upper Canada established a Special Committee to inquire into the incorporation of law practices. The Special Committee reported to Convocation in June 1977. Convocation approved the incorporation of law practices in principle, on condition that the *Law Society Act* would be amended to provide that individual lawyers would remain fully liable to their clients.

In November 1984, Convocation adopted a report from a second Special Committee which recommended that:

1. The Law Society seek changes to its legislation in order to permit the incorporation of law practices.
2. The liability of the individual lawyer remain unlimited, notwithstanding that he or she renders professional services through a corporation.
3. The general approach adopted by the Law Society of Alberta concerning the incorporation of law practices be followed subject to any alterations deemed necessary by the Legislation and Rules Committee.

In May 1989, the Attorney General of Ontario informed the Law Society that he was considering the introduction of legislation to permit the incorporation of law practices in this province. A third Special Committee on the Incorporation of Law Practices was struck. Among other matters, it reviewed the legislative schemes in Alberta and British Columbia.

On June 23, 1989, Convocation received a report from the Special Committee and resolved to recommend to the Attorney General that the legislation should:

- permit the holding of non-voting shares by employees of the corporation and by members of the families of members of the Law Society who held voting shares of the corporation;
- allow for the incorporation of
  - (i) "personal law corporations" in which there would be a sole voting shareholder and director who would be a member of the Law Society; and

- (ii) "law corporations" in which there would be two or more voting shareholders who were members of the Law Society and in which a personal law corporation might be a non-voting shareholder;
- permit the members, or persons who were qualified to become members, of an interprovincial firm to become voting shareholders in a law corporation;
- retain the existing personal liability of lawyers.

Two weeks later, on July 6, 1989, the Attorney General introduced Bill 45 (*An Act to amend the Law Society Act and the Solicitors Act*) to the Ontario Legislature. Of the provisions recommended by Convocation on June 23, only that concerning the personal liability of lawyers was included. On June 28, 1990, Bill 45 received Royal Assent and became Chapter 8 of the Statutes of Ontario, 1990. Those parts of the bill which provide for incorporation will be found at Appendix A.

### III : THE MAIN FEATURES OF THE ONTARIO LEGISLATION

#### Bill 45

Bill 45 amended the *Law Society Act*, R.S.O. 1980, c. 233. At Appendix A is the text of Part II of the *Law Society Act*, R.S.O. 1990, c. L.8. This part of the act contains all the incorporation provisions, none of which has yet been proclaimed in force. The major provisions are to be found at:

Section 66 (which amends s.1).

Section 68 (which adds a new section: s. 38.1).

Section 71 (which adds new sections 61.1 to 61.12).

Changes are also made to the rule-making power (s. 72 amends s. 62(1)) and the power to make regulations (s. 73 amends s. 63).

#### Major ways in which the Ontario legislation differs from that in Alberta and British Columbia

In the Ontario legislation, no distinction is made between voting and non-voting shares. The only persons who may hold shares in a law corporation are members of the Law Society.

Unlike British Columbia, there is no distinction between a corporation in which all the shares are held by one person and a corporation in which the shares are held by more than one person.

#### Outline of the Ontario scheme

The scheme of the Ontario legislation is as follows:

- A corporation that holds a certificate of authorization may practise as a barrister and solicitor (s. 61.1).
- A corporation that holds a certificate of authorization is called a "law corporation" (s. 1 as amended by s. 66).

- A law corporation is not a member of the Law Society.
- The legal and beneficial ownership of all issued shares of a law corporation must be vested in one or more members of the Law Society (s. 61.2(1)(d)).
- All the directors of a law corporation must be members of the Law Society whose rights and privileges are not suspended (s. 61.2(1)(e)). (Note that a suspended member can be a shareholder but not a director.)
- Voting rights attached to shares of a law corporation may be exercised only by a member whose rights and privileges are not suspended (s. 61.4(1)).
- The individuals who carry on the practice of law on behalf of the corporation must be members of the Law Society whose rights and privileges are not suspended (s. 61.2(1)(c)).
- Where a law corporation
  - (i) contravenes any of the provisions above, or
  - (ii) contravenes any other provision of the act, or
  - (iii) does anything that, if done by a member, would be professional misconduct or conduct unbecoming a barrister and solicitor,there is provision for the following penalties:
  - reprimand in committee
  - cancellation of certificate of authorization
  - suspension of certificate of authorization
  - such other disposition as Convocation considers proper in the circumstances. (Section 61.10(1) and s. 38.1.)
- A law corporation may enter any partnership arrangement for the practice of law that a member may enter (s. 61.9(2)).
- The following sections of the Law Society Act apply to law corporations:
  - Section 36 (suspension for failure to pay fees).
  - Section 40 (Convocation may order a corporation to pay the expense of an investigation).
  - Section 41 (Convocation may award costs to a law corporation where disciplinary proceedings are unwarranted).
  - Section 42 (stop-orders on a corporation's bank accounts).
  - Section 43 (appointment of trustees).
  - Section 57 (interest on mixed trust accounts).
  - Section 61 (indemnity for professional liability).

- The liability of shareholders is addressed by s. 61.5 which states:

Despite subsection 92(1) of the *Business Corporations Act*, a shareholder of a corporation while it is a law corporation or while it is acting in contravention of s. 50 is liable to persons to whom it is providing the services of a barrister or solicitor to the same extent and in the same manner as a partner in a law firm if there is more than one shareholder or in the same manner as a sole practitioner if there is only one shareholder.

- Solicitor-client privilege is protected by s. 61.7 which reads:

For all purposes of law, a client of a law corporation has the same rights and protections, and a law corporation, its directors, shareholders and employees owe the same duties, with respect to solicitor-client privilege as apply between a client and a member or a member's employee.

#### The power to make regulations

The power to make regulations under the *Law Society Act* is given to Convocation by s. 63 of the act. The power is subject to the approval of the Lieutenant Governor in Council. Bill 45 adds to s. 63 a number of specific powers to make regulations in respect of law corporations. These powers will be found in s. 73 of the act. In the recommendations of this report, your Committee lists the specific head of power that appears appropriate wherever a regulation is recommended. However, the Committee is recommending a number of regulations which do not appear to fit within any of the new specific powers granted by Bill 45. In such cases, the Committee recommends that the regulation be made under the general power that is granted by the introductory paragraph of s. 63 of the act which reads as follows:

Subject to the approval of the Lieutenant Governor in Council, Convocation may make regulations respecting any matter that is outside the scope of the rule-making powers specified in section 62, and without limiting the generality of the foregoing, [there follows a list of specific matters]

#### IV : FINANCIAL IMPACT OF THE RECOMMENDATIONS

The administration of a regulatory scheme for law corporations will inevitably require staff time, some office space and a records system. Section 72 gives power to Convocation to make rules prescribing fees for law corporations. Later in the report, your Committee recommends that the matter of fees be referred to the Finance and Administration Committee. At this point, the Committee wishes only to suggest that it would be appropriate that application fees and annual filing fees should be set at a level which will at least cover the cost of the additional regulatory work.

#### V : RECOMMENDATIONS - A : REGULATIONS



A.1. CERTIFICATE OF AUTHORIZATION

Paragraph 3.2 of s. 63 of the *Law Society Act* gives power to Convocation to make regulations

respecting the issue and renewal of certificates of authorization, including,

- i. procedures to be followed in relation thereto,
- ii. the manner of proving the matters referred to in subsection 61.2(1);

It is envisaged that there will be a standard application form which requires an applicant corporation to provide the following details:

- The name of the corporation.
- The Ontario Corporation Number of the corporation.
- The full address of the registered office of the corporation.
- The names and addresses of all the directors of the corporation.

It is proposed that the regulation should require an applicant corporation to submit a copy of its certificate of incorporation and articles of incorporation.

Recommendations

- #1. That under the power granted by paragraph 3.2 of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

A corporation making application for a certificate of authorization under s. 61.2(1) of the Act shall cause to be filed with the Secretary

(i) an application, in the form prescribed by the rules, duly completed and signed by each of the directors of the corporation; and

(ii) a copy of the certificate of incorporation and the articles of the corporation, certified by a director of the corporation to be a true and complete copy;

together with an application fee in the amount prescribed by the rules.

- #2. That under the power granted by paragraph 3.2 of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

The form to be filed by a corporation making application for a certificate of authorization shall include a statement signed by each of the directors of the corporation, certifying that the corporation satisfies the requirements referred to in clauses 61.2(1) (a) to (f) of the Act.

- #3. That under the power granted by paragraph 3.2. of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

Where the Secretary issues a certificate of authorization under s. 61.2(1) of the Act, the certificate shall be in the form prescribed by the rules.

- #4. That under the power granted by paragraph 3.2. of s. 63 of the *Law Society Act* and under the general power granted by the introductory paragraph of s. 63 of the *Law Society Act*, Convocation make regulations in the following terms:

(a) If it shall at any time come to the attention of the Secretary that a certificate of authorization held by a law corporation contains an error or is incomplete, the Secretary may, by written notice mailed or delivered to the corporation at its last known registered office as recorded on the books of the Law Society, require the certificate to be returned to the Secretary within ten days of the delivery or mailing of the notice, to be corrected or, at the option of the Secretary, to be replaced by another certificate of authorization drawn in terms satisfactory to the Secretary. The return of a certificate for correction or replacement in accordance with this section shall not constitute an interruption in the holding of the certificate by the corporation. Any replacement certificate:

(i) shall be dated as of the date of issue of the certificate that was replaced; and

(ii) shall indicate that it is a replacement for the original certificate.

(b) Where a certificate of authorization issued to a corporation has been lost or destroyed, the corporation may apply to the Secretary for the issue of a replacement certificate. Any such replacement certificate:

(i) shall be dated as of the date of issue of the certificate that was replaced; and

(ii) shall indicate that it is a replacement for the original certificate.

- #5. That under the power granted by the introductory paragraph of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

A written statement given under the hand of the Secretary, the Deputy Secretary or an Assistant Secretary, stating whether or not a corporation holds, or does not hold, a certificate of authorization, shall be conclusive evidence as between the Society, its members and law corporations that, at any particular time, the corporation therein named did or did not hold a certificate of authorization.

A.2. THE NAME OF A LAW CORPORATION

Subparagraph 3.1.i of s. 63 of the *Law Society Act* gives power to Convocation to make regulations

prescribing requirements that a corporation must satisfy before a certificate of authorization will be issued or renewed, including,

- i. requirements related to the name of a corporation and to the approval of the name

Section 10(1) of the *Business Corporations Act*, requires that the name of every business corporation include an indication that the entity is a corporation. However, since the liability of shareholders of a law corporation is explicitly not limited (s. 61.5 of the *Law Society Act*) use of the terms "Limited" or "Ltd." would be inappropriate. In order to avoid possible confusion on the part of the public it is proposed that every law corporation should be required to use the words "Law Corporation" or "société juridique professionnelle" as the final words in its name.

It may be appropriate to make other rules concerning the names that may be used by law corporations. However, the names under which lawyers may practise are governed by the Rules of Professional Conduct and your Committee suggests that any further rules should be formulated by the Professional Conduct Committee. This matter is addressed later in this report.

Note: Amendment, see page 75

Recommendation

- #6. That under the power granted by subparagraph 3.1.i of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

(a) The name of every law corporation shall include the words "Law Corporation" or the words "société juridique professionnelle".

(b) The name of a law corporation shall not include the words "Limited" or "Limitée" or the abbreviations "Ltd" or "Itée".

A.3. CHANGES OF INFORMATION

It is important that any change in the information given in an application for a certificate of authorization should be promptly reported to the Law Society so that up-to-date records can be maintained.

Recommendation

#7. That under the general power granted by the introductory paragraph of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

(a) Immediately following any change in the articles of a law corporation, the corporation shall give written notice to the Secretary, notifying the Secretary of such change. The notice shall be accompanied by a copy of the amendment of articles, certified by a director of the corporation to be a true and complete copy.

(b) Immediately following any change in the information given by a corporation in its application for a certificate of authorization, the corporation shall give written notice to the Secretary, notifying the Secretary of the details of such change.

A.4 THE BANKRUPTCY OF A LAW CORPORATION

A member of the Law Society who becomes bankrupt is not prohibited from continuing to practise. The matter is dealt with in s. 7 of Regulation 573 which reads:

7. - (1) Every barrister and solicitor shall forthwith notify the Secretary of the receipt by him of a petition to declare him bankrupt or of the making by him of a general assignment for the benefit of his creditors.

(2) From and after the date a barrister and solicitor is declared to be a bankrupt or makes a general assignment for the benefit of his creditors and so long as he remains an undischarged bankrupt, he shall not without the written permission of Convocation or the Discipline Committee accept from or on behalf of clients any money or other property other than in payment of fees for services rendered or in reimbursement for money properly expended or expenses properly incurred on behalf of a client.

(3) A member by becoming bankrupt under the *Bankruptcy Act* (Canada) may be guilty of conduct unbecoming a barrister and solicitor.

Your Committee is of the opinion that different provisions should apply to a law corporation which becomes bankrupt. In the first place, there is the possibility that upon the bankruptcy of a law corporation its certificate of authorization will vest in the trustee in bankruptcy. It seems inherently undesirable that a licence to practise as a barrister and solicitor should vest in a person who is unlikely to be a member of the Law Society.

In the second place, although one of the objectives of bankruptcy legislation is to permit individuals to free themselves from crippling obligations and to make a fresh start, it is otherwise with a corporation that becomes bankrupt. A bankrupt corporation may not apply for a discharge unless it has satisfied the claims of its creditors in full. (*Bankruptcy Act*, ss. 169(1), 169(4).) The likelihood is remote that a bankrupt corporation will succeed in satisfying the claims of its creditors in full. The law corporation

which becomes bankrupt is likely to remain so for a very long time, during all of which time it will be subject to the restrictions which apply to bankrupt persons. The bankruptcy of a law corporation will usually mean the end of its practice as a barrister and solicitor. Your Committee is therefore proposing that a certificate of authorization should expire when:

(i) a law corporation makes an assignment of all its property under the *Bankruptcy Act* for the general benefit of its creditors; or

(ii) a receiving order is made against the law corporation under the *Bankruptcy Act*.

A proposal to give effect to this recommendation by regulation will be found at recommendation #9 which deals with the expiry of certificates of authorization.

As in the case of members who become bankrupt, it is necessary that the Society be notified when a law corporation becomes bankrupt.

#### Recommendation

#8. That under the general power granted by the introductory paragraph of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

(a) Every law corporation shall forthwith notify the Secretary of the receipt by the corporation of a petition under the *Bankruptcy Act* (Canada) for a receiving order against the corporation.

(b) Every law corporation shall forthwith notify the Secretary and shall, at the same time, surrender to the Secretary its certificate of authorization, when

(i) the corporation makes an assignment of all its property under the *Bankruptcy Act* (Canada) for the general benefit of creditors; or

(ii) a receiving order under the *Bankruptcy Act* (Canada) is made against the corporation.

#### A.5 THE DURATION OF A CERTIFICATE OF AUTHORIZATION

The *Law Society Act* clearly envisages the periodic expiry and renewal of certificates of authorization. Thus:

- In s.1 (as amended by s. 66) a "law corporation" is defined as a corporation that holds a certificate of authorization issued or renewed under s. 61.2
- Section 61.2(1) requires the Secretary to renew the certificate of authorization of a corporation that applies therefor if it meets certain requirements.
- Section 61.2(6) permits Convocation or a committee of Convocation to continue the certificate of authorization of a law corporation pending the disposition of an appeal against the decision of the Secretary: in the context, this can refer only to a decision not to renew.

- Section 61.2(7) refers to the renewal of a certificate of authorization in circumstances where a corporation is contravening s. 61.2(1)(d).
- Paragraph 3.4 of s. 63 of the *Law Society Act* gives power to Convocation to make regulations "providing for the periodic expiry of certificates of authorization".

#### The consequences of expiry

If certificates expire on a periodic basis, it is only realistic to anticipate that some corporations will inadvertently allow their certificates of authorization to expire before they are renewed. The significance of the inadvertent expiry of certificates lies in the fact that the consequences of the expiry of a certificate of authorization in the case of a *corporation* are not analogous to the consequences which follow failure to pay annual membership dues in the case of a *member*.

A human person who is a member of the Law Society continues to enjoy the right to practise as a barrister and solicitor until that person's rights and privileges as a member are suspended, or until the membership is cancelled or until the member resigns. Failure to pay annual membership dues does not automatically cancel the membership. A member in arrears of dues can legally continue to practise until Convocation suspends that member's rights and privileges as a member: Convocation may not make an order of suspension until at least four months have passed after the day on which payment was due (s. 36).

By contrast, a law corporation loses the right to practise the moment it ceases to hold a certificate of authorization. This will happen automatically, without any action by Convocation, the moment a certificate expires.

The consequences of the cancellation, suspension or expiry of a certificate of authorization will include the following:

- (i) The corporation will cease to be a "law corporation" as defined in s. 1 (as amended by s.66) because it no longer holds a certificate of authorization.
- (ii) The corporation will not be entitled to practise as a barrister and solicitor. This is by virtue of the operation of sections 50 and 61.1 of the act and s. 3(1) of the *Business Corporations Act*.
- (iii) The corporation which, while not holding a certificate of authorization, acts as a barrister or solicitor, or holds itself out as or represents itself as a barrister or solicitor, or practises as a barrister or solicitor, will be violating the prohibition in s. 50 of the act.
- (iv) The moment the corporation ceases to be a law corporation (by virtue of the cancellation, suspension or expiry of its certificate of authorization) it would appear to be outside the regulatory and disciplinary jurisdiction of the Law Society. This is because the disciplinary powers of the Law Society apply only to law corporations (s. 38.1). The situation of a law corporation which ceases to hold a certificate of authorization is therefore similar to that of a member who resigns or who is disbarred: the Law Society no longer has authority over that person.

- (v) The moment the corporation ceases to be a law corporation (by virtue of the cancellation, suspension or expiry of its certificate of authorization) there will no longer be any special restrictions on who may be directors and shareholders. Under paragraphs (d) and (e) of s. 61.2(1) of the act, the directors and shareholders of a law corporation must be members of the Law Society. The moment the corporation ceases to be a law corporation, this requirement lapses. Control and ownership of the corporation can therefore pass to persons other than members of the Law Society.
- (vi) Although the corporation may still be entitled to hold funds which it received in trust in connection with its practice as a barrister and solicitor, it would appear not to be entitled to receive any new trust funds for that purpose. It is also questionable whether the corporation could disburse any funds from the trust account since it could, presumably, only disburse funds in connection with the practice of a barrister and solicitor, a practice which it is no longer legally entitled to perform.

These consequences will occur automatically, and immediately, when a certificate of authorization expires.

The objective of the Law Society in these circumstances must be to protect the interests of the clients of the corporation. It would be possible for the Society to apply to court for an order appointing a trustee of the practice under s. 43 of the act. However, it seems undesirable that the Law Society should be in the position of having to apply to the court for a trusteeship order whenever a law corporation fails to renew its certificate of authorization.

In light of these considerations, and particularly in light of the consequences of the expiry of a certificate and the potential danger to clients' interests, your Committee suggests that, despite the apparent intention of the act to provide for periodic expiry and renewal, certificates of authorization should not expire. They should, instead, be like the status of membership which may be ended only by resignation, cancellation or death.

#### Recommendation

- #9. That under the power granted by paragraph 3.2. of s. 63 of the *Law Society Act* and the general power granted by the introductory paragraph of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

Every certificate of authorization shall be valid and in force until:

- (i) the certificate is cancelled by Convocation;
- (ii) the certificate is suspended by Convocation;
- (iii) the certificate is surrendered by the shareholders in accordance with s. && of this regulation [recommendation #11];
- (iv) the corporation is wound up or dissolved;
- (v) the corporation makes an assignment of all its property under the *Bankruptcy Act* (Canada) for the general benefit of its creditors; or

- (vi) a receiving order is made against the corporation under the *Bankruptcy Act* (Canada).

#### A.6 CERTIFICATE OF COMPLIANCE

One of the advantages of a system under which a certificate of authorization expires on a periodic basis is that its renewal can be made conditional upon the Secretary's being satisfied that the corporation is continuing to meet the requirements set out in the act and regulations. If Convocation adopts the recommendation of this report that certificates of authorization should not expire but should continue in force until the occurrence of one of the events mentioned in the previous recommendation, there will be a need for some other way of ensuring that a law corporation is continuing to meet the requirements of the act and regulations.

Your Committee suggests that this can be accomplished by requiring each law corporation to file an annual certificate of compliance in which a director of the corporation must certify that the various requirements continue to be met by the corporation.

Although the primary purpose of the certificate of compliance is to ensure, once a year, that all law corporations are meeting the requirements of the act and regulations, it can have a secondary use at any time when the Law Society has reason to investigate a law corporation for suspected violation of the act or regulations. It is therefore proposed that the regulation provide that, in addition to the annual filing requirement, a law corporation may be required to complete and file a certificate of compliance at any time, upon fourteen days notice by the Secretary.

#### Recommendation

- #10. That under the general power granted by the introductory paragraph of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

(a) No later than May 31 each year, the Secretary shall send to every law corporation a notice in the form prescribed by the rules, requiring the corporation to cause to be completed and returned an annual certificate of compliance in the form prescribed by the rules no later than July 1 of that year.

(b) No later than July 1 each year, every law corporation shall cause to be filed with the Secretary a certificate of compliance in the form prescribed by the rules, duly completed and certified by the signature of a director of the corporation.

(c) In addition to the annual filing requirement in paragraph (b) above, a law corporation shall, at any time when requested in writing by the Secretary, file with the Secretary within fourteen days of receipt of the request, a certificate of compliance in the form prescribed by the rules duly completed and certified by the signature of a director of the corporation.



A.7 THE SURRENDER OF CERTIFICATES OF AUTHORIZATION

It has been noted earlier that the surrender of a certificate of authorization is analogous to the resignation of a member. That being the case, it seems appropriate to make a regulation similar to s. 12 of Regulation 573 which governs the resignation of members. The recommendation which follows employs, wherever possible, the wording of s. 12 of Regulation 573.

Recommendation

#11. That under the power granted by paragraph 3.3 of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

(a) A law corporation shall not surrender its certificate of authorization except:

(i) where required to do so by these regulations; or

(ii) after having been granted the permission of Convocation in accordance with the provisions set out below.

(b) Every application of a law corporation for permission to surrender its certificate of authorization shall be in writing and sent to the Secretary accompanied by a statutory declaration, signed by each of the directors of the corporation, or by the legal personal representative of the last surviving director, and setting forth,

(i) the name of the corporation, its Ontario Corporation Number, the full address of the registered office of the corporation, and the date of issue of the certificate of authorization, and stating briefly the reasons for the application;

(ii) that all trust funds or clients' property for which the applicant law corporation was responsible have been accounted for and paid over to the persons entitled thereto and an accountant's certificate to that effect shall be attached and marked as an exhibit or, alternatively, that the applicant law corporation has not handled trust funds or other clients' property;

(iii) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other barrister and solicitor or, alternatively, that the applicant law corporation has not engaged in practice;

(iv) that the directors are not aware of any claim against the law corporation in its professional capacity or in respect of its practice; and

(v) such additional information or explanation as may be relevant by way of amplification of the foregoing.

(c) The directors shall also furnish proof of publication in the Ontario Reports of a notice of the intention of the law corporation to apply for permission to surrender the certificate of authorization in the form prescribed by the rules, such notice to be published at least thirty days before the application is sent to the Secretary.

(d) Every application for permission to surrender a certificate of authorization shall be referred to the Finance and Administration Committee for consideration and report to Convocation.

(e) The Finance and Administration Committee may require additional information and may accept undertakings from the directors and shareholders, or from any of them, and in reporting its recommendations to Convocation it may include conditions which are to be complied with by the directors and shareholders, or by any of them, as a term of granting permission for the surrender of the certificate.

(f) Where the directors of the law corporation believe that there may be good reason for dispensing with any of the foregoing requirements, they may make application to the Finance and Administration Committee setting forth their reasons and the Committee may in its discretion dispense with any of such requirements.

(g) Where the ownership of all the issued shares of a law corporation is vested in one member, where that member is the only director of the corporation and where that member has been found to be mentally incompetent and a committee of that member's affairs has been appointed, the application for permission to surrender the certificate of authorization may be made by that member's committee.

(h) Notwithstanding anything in subsections (a) to (h), if a report of the Discipline Committee is before Convocation recommending the cancellation of the certificate of authorization of a law corporation, the directors may request Convocation to permit them to surrender the corporation's certificate of authorization, and Convocation may grant the request upon such terms and conditions as it considers proper.

#### A.8 THE DISSOLUTION OR WINDING UP OF A LAW CORPORATION

Where a corporation is wound up or dissolved it ceases to be subsisting corporation under the *Business Corporations Act*. It is therefore no longer able to satisfy the requirements of clause (b) of s. 61.2(1) of the *Law Society Act* and can no longer legally provide the services of a barrister or solicitor: s. 61.10(1)(c). Moreover, since it is no longer a corporation, it is no longer a "law corporation" as defined by s. 1 (as amended by s.66) of the act. An earlier recommendation in this report provides that a certificate of authorization ceases to be valid and in force upon the winding up or dissolution of the corporation (recommendation #9).

The consequences which have already been described as arising upon the expiry, cancellation or suspension of a certificate of authorization will therefore ensue. It will be necessary for the Law Society to have in place regulations to protect the interests of clients.

Where the winding up or dissolution is involuntary (for instance, where the Director under the *Business Corporations Act* cancels the corporation's certificate of incorporation), there are no conditions which the Law Society can require to be met before the winding up or dissolution occurs. However, it would be open to the Law Society in such a situation to apply to court for an order appointing a trustee of the practice under s. 43 of the *Law Society Act*. Where the winding up or dissolution is voluntary, the Law Society is in a position to ensure that the interests of clients are adequately protected before the corporation is wound up or dissolved. The simplest way of achieving this objective is to make it a condition of every certificate of authorization that the shareholders will not require the corporation to be wound up voluntarily and will not authorize its voluntary dissolution until the Law Society has granted permission for the surrender of the certificate of authorization in accordance with the provisions of the regulation recommended in the previous section of this report.

#### Recommendation

- #12. That under the general power granted by the introductory paragraph of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

The shareholders of a law corporation shall not require the corporation to be wound up voluntarily and shall not authorize the voluntary dissolution of the corporation, until Convocation has approved the surrender of the certificate of authorization in accordance with s. && of this regulation [recommendation #11].

#### A.9 THE AMALGAMATION OF A LAW CORPORATION WITH ANOTHER CORPORATION

Where a law corporation amalgamates with another corporation (which may or may not be a law corporation) the amalgamated corporation will possess all the property, rights and privileges of each of the amalgamating corporations (*Business Corporations Act*, s. 179(b)). The "property, rights and privileges" will presumably include any certificates of authorization, and any rights to practise as barristers and solicitors, possessed by the amalgamating corporations. The amalgamated corporation would therefore be entitled to practise as a barrister and solicitor under the authority of the certificates of any of the amalgamating corporations.

Since, however, the act requires that the Secretary be satisfied in respect of the matters set out in s. 61.2(1) before a certificate can be issued to a corporation, it seems appropriate that the Secretary should be satisfied that the new, amalgamated entity, meets the requirements for a certificate. It is therefore proposed that, upon amalgamation, the amalgamated corporation should apply for a new certificate of authorization in accordance with s. 61.2(1). Pending the issue of the new certificate, the amalgamated corporation would be entitled to continue to practise under the authority of any certificate issued to any of the amalgamating corporations.

Upon the issuance of a new certificate of authorization to the amalgamated corporation, the corporation should be required to surrender for cancellation all certificates held by the amalgamating corporations.

If the Secretary is not satisfied that the amalgamated corporation meets the requirements of s. 61.2(1), the act will not permit the Secretary to issue a new certificate of authorization. At first sight, it may appear that the amalgamated corporation may nonetheless continue to practise under the authority of any certificate held by the amalgamating corporations. In fact, however, this is not the case.

29th May, 1992

The only situation in which the Secretary may decline to issue a certificate is where the Secretary determines that the corporation is not meeting one or more of the requirements set out in s. 61.2(1). But if the amalgamated corporation is unable to satisfy the requirements of s. 61.2(1) it is, by virtue of that very fact, prohibited from practising as a barrister or solicitor: s. 61.10(1)(c). Where, therefore, the Secretary determines that the amalgamated corporation does not meet one or more of the requirements of s. 61.2(1) and declines to issue a certificate, but the corporation continues to practise under the ostensible authority of a certificate (or certificates) held by one or more of the amalgamating corporations, it will be subject to disciplinary action under s. 38.1 for violating s. 61.10(1). If the charge is upheld, the corporation will be liable to penalties which may include the cancellation of the certificates of the amalgamating corporations.

In short, the wording of the act is such that where the Secretary declines to issue a certificate to an amalgamated corporation, the corporation can be charged with violating the prohibition of s. 61.10(1) if it continues to practise.

#### Recommendation

#13. That under the power granted by paragraph 3.1 of s. 63 of the *Law Society Act*, and under the general power granted by the introductory paragraph of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

(a) Where a law corporation amalgamates with another corporation, the amalgamated corporation shall, within twenty-one days of the articles of amalgamation becoming effective, apply to the Secretary under s. 61.2(1) for a new certificate of authorization in the name of the amalgamated corporation.

(b) An amalgamated corporation applying for a new certificate of authorization shall cause to be filed with the Secretary

(i) an application, in the form prescribed by the rules, duly completed and signed by each of the directors of the amalgamated corporation; and

(ii) a copy of the certificate of incorporation and the articles of the amalgamated corporation, certified by a director of the corporation to be a true and complete copy;

(c) The form to be filed by an amalgamated corporation making application for a new certificate of authorization shall include a statement signed by each of the directors of the amalgamated corporation, certifying that the corporation satisfies the requirements referred to in clauses 61.2(1) (b) to (f) of the Act.

(d) Upon the issuance of a new certificate of authorization to the amalgamated corporation, the corporation shall forthwith surrender to the Secretary all certificates of authorization issued to the amalgamating corporations and the Secretary shall immediately cause the surrendered certificates to be cancelled.

(e) Where the Secretary is not satisfied that a requirement set out in s. 61.2(1) has been met by the applicant amalgamated corporation, the Secretary shall notify the applicant and shall also inform the applicant that in the Secretary's opinion the amalgamated corporation will be acting in violation of s. 61.10(1) of the *Law Society Act* if it thereafter provides the services of a barrister or solicitor without first meeting the requirement.

A.10 THE DISPOSITION OF SHARES OF A SHAREHOLDER WHO HAS CEASED TO BE A MEMBER OF THE LAW SOCIETY

Section 61.10(1)(c) of the *Law Society Act* states that a law corporation shall not provide the services of a barrister or solicitor at any time when it is unable to satisfy the requirements referred to in clauses 61.2(1)(b) to (f); this includes s. 61.2(1)(d) which makes it a condition for the issuance of a certificate of authorization that the legal and beneficial ownership of all of a corporation's issued shares be vested in one or more members of the Law Society. Therefore where a shareholder of a law corporation ceases to be a member of the Law Society, the corporation must cease to practise law until all its issued shares are once again vested in one or more members of the Law Society.

However, this strict rule is modified by s. 61.10(2) which states that a law corporation is not contravening clause 61.2(1)(d) "if the shares of a shareholder who has ceased to be a member are being disposed of in accordance with the regulations."

Paragraph 3.5 of s. 63 of the *Law Society Act* gives power to Convocation to make regulations

respecting the disposition ... of shares of a shareholder of a law corporation ... who has ceased to be a member.

Your Committee therefore proposes a two-step process. In the interests of ensuring an accurate, up-to-date public record, the regulation should require that when a shareholder ceases to be a member of the Law Society, the corporation should notify the Secretary of the Law Society within 5 days. It is proposed, however, that there be a period of 90 days from the happening of the event, within which time the law corporation can take the necessary steps to bring its shareholdings once again into conformity with the act - by whatever means the corporation chooses.

If, at the end of the ninety days, the corporation has failed to bring its shareholdings into conformity with the provisions of the act, your Committee proposes that it be required to cease practising until such time as the contravention is remedied.

Recommendation

#14. That under the power granted by paragraph 3.5 of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

(a) When a shareholder of a law corporation ceases to be a member of the Law Society, the law corporation

(i) shall within five days, notify the Secretary of the Law Society accordingly; and

(ii) may continue to practise as a barrister and solicitor for a period not exceeding ninety days if, throughout that period, active steps are being taken to dispose of the shares of such shareholder in such a manner that neither legal nor beneficial ownership is vested in a person who is not a member.

(b) When the membership of a shareholder of a law corporation is placed in abeyance in accordance with s. 31 of the Act, the provisions of paragraph (a) shall apply as if the shareholder had ceased to be a member.

A.11. THE DISPOSITION OF SHARES OF A SHAREHOLDER WHOSE RIGHTS AND PRIVILEGES AS A MEMBER ARE SUSPENDED

Paragraph 3.5 of s. 63 of the *Law Society Act* gives power to Convocation to make regulations

respecting the disposition ... of shares of a shareholder of a law corporation whose rights and privileges as a member are suspended ....

Although a member whose rights and privileges are suspended may not be a director of a practising law corporation (s. 61.2(1)(e)), may not exercise any voting rights attached to the shares (s. 61.4(1)) and may not carry on the practice of law for the corporation (s. 61.2(1)(c)), there is no prohibition in the act against the continued ownership of shares of a law corporation by such a person. Accordingly, your Committee has concluded that there is no need to make a regulation governing the disposition of shares of a shareholder whose rights and privileges are suspended. It is a business decision as to whether a suspended member should continue as a shareholder. It should be left to the directors and shareholders to decide what they wish to do in each case.

A.12. THE VOTING OF SHARES OF A SHAREHOLDER WHO IS DISENFRANCHISED UNDER THE LAW SOCIETY ACT

A.12.1. The shareholder whose rights and privileges as a member are suspended

If a law corporation is to provide the services of a barrister or solicitor, every shareholder must be a member of the Law Society (*Law Society Act*, s. 61.2(1)(d) and s. 61.10(1)(c)). The fact that the membership rights and privileges of a particular shareholder may be suspended affects neither that person's right to continue as a shareholder nor the corporation's right to continue providing the services of a barrister or solicitor.

Section 61.4(1) of the act provides, however, that a member whose rights and privileges are suspended may not exercise any voting rights attached to the shares of a law corporation. Section 61.10(1)(e) states that no law corporation shall permit shares to be voted in contravention of s. 61.4. A shareholder whose rights and privileges are suspended is therefore disenfranchised for the duration of the suspension.

A.12.2. The shareholder who has ceased to be a member of the Law Society

A similar situation arises where a shareholder in a law corporation ceases to be a member of the Law Society. Section 61.10(2) of the act permits the law corporation to continue providing the services of a barrister or solicitor even though shares may be held by a person who has ceased to be a member, on condition that "the shares ... are being disposed of in accordance with the regulations". Earlier in this report (recommendation #14) your Committee has recommended that the regulation provide a grace period of ninety days during which arrangements can be made to deal with the shares of a shareholder who has ceased to be a member. If this recommendation is adopted and made part of the regulation it will be possible for a person who is no longer a member of the Law Society to continue holding shares for a period of up to ninety days without depriving the corporation of the right to practise.

Under s. 61.4(1), however, a shareholder who has ceased to be a member may not exercise any voting rights attached to the shares.

A.12.3. The policy underlying the disenfranchisement

The reason for the disenfranchisement of a suspended member, or a member who has ceased to be a shareholder, appears to be that it is deemed undesirable for such persons to exercise any influence over the affairs of a corporation which is providing legal services to the public.

A.12.4. The possibility of a disenfranchised shareholder appointing a proxy

At common law, voting rights are treated as attributes of shares rather than as rights attaching solely to the holder. Where the membership rights and privileges of a holder of voting shares are suspended, therefore, the shares continue to carry voting rights even though the particular shareholder cannot exercise those rights.

There is a possibility that a shareholder whose rights and privileges have been suspended might be able to appoint a proxy to exercise the voting rights attached to the shares. Your Committee has been advised, however, that it is far from certain (either at common law or in light of s. 110(1) of the *Business Corporations Act*) that this would be the case. If a proxy could be appointed, the ability of the suspended member to direct or influence the proxy could subvert the apparent purpose of the disenfranchisement.

A.12.5. Problems arising from the disenfranchisement

The major problem arising from the disenfranchisement of a shareholder whose rights and privileges have been suspended and the disenfranchisement of a shareholder who has ceased to be a member, is that a situation could occur in which no one is entitled to exercise the voting rights attached to any shares of a particular corporation. Such a situation is best exemplified in the case of a law corporation in which all the voting shares are held by one member and that member is under suspension. The corporation would effectively be paralysed.

Your Committee has been advised that a scheme which results in there being no shares outstanding on which voting rights are exercisable would offend established principles of common law.

An inability to exercise any voting rights in a law corporation could also frustrate the Law Society. Situations may arise in which it is in the interests of clients of the law corporation that new directors be elected with power to cause the law corporation to comply with the requirements of the Law Society. If no one is entitled to exercise the voting rights of a shareholder such election of new directors may not be possible.

A different problem may arise if there is more than one holder of voting shares (but only one class of shares) and one shareholder's rights and privileges as a member are suspended. The inability to exercise the voting rights might offend s. 22(3) of the *Business Corporations Act* which requires that where a corporation has only one class of shares every shareholder shall have a right to vote.

A.12.6. A proposed regulation

The drafters of the amendments to the *Law Society Act* appear to have foreseen the need to address the problems arising from the disenfranchisement of shareholders whose rights and privileges as members are suspended and shareholders who cease to be members. Paragraph 3.5 of s. 63 of the *Law Society Act* gives power to Convocation to make regulations

respecting the disposition and voting of shares of a shareholder of a law corporation whose rights and privileges as a member are suspended or who has ceased to be a member.

After considerable consultation with counsel, your Committee has decided that the best solution to the problem of disenfranchisement is to provide that where a shareholder's rights and privileges are suspended, or where a shareholder ceases to be a member, the voting rights attached to any shares held by that shareholder are to be exercised by the Secretary of the Law Society or by a member designated by the Secretary.

Recommendation

#15. That under the power granted by paragraph 3.5 of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

So long as the corporation holds a certificate of authorization issued under s. 61.2(1) of the *Law Society Act*, the voting rights attached to any shares in the corporation held by

(i) a shareholder whose rights and privileges as a member are suspended, or

(ii) a shareholder who ceases to be a member

may be exercised only by the Secretary of the Law Society or by a member designated in writing by the Secretary of the Law Society, until such time as the legal and beneficial ownership of the shares are once again vested in one or more members whose rights and privileges are not suspended, or the shares have been redeemed by the corporation.



A.13. RESTRICTION ON THE TRANSFER OF SHARES TO NON-MEMBERS

If a law corporation is to provide the services of a barrister or solicitor, the legal and beneficial ownership of all of its issued shares must be vested in one or more members of the Law Society (sections 61.2(1)(d) and 61.10(1)(c) of the act). It is suggested that the articles of every law corporation should contain a provision prohibiting the transfer of shares to persons who are not members.

Recommendation

#16. That under the power granted by paragraph 3.1 of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

(a) The articles of every law corporation shall contain a provision in the following words:

So long as the corporation holds a certificate of authorization issued under s. 61.2(1) of the *Law Society Act*, no shares of the corporation may be transferred to any person other than a member of the Law Society of Upper Canada.

(b) Notice of the restriction in paragraph (a) above shall be endorsed on the share certificates of the corporation.

A.14. THE DISQUALIFICATION OF DIRECTORS

If a law corporation is to provide the services of a barrister or solicitor, all of its directors must be members whose rights and privileges are not suspended (sections 61.2(1)(e) and 61.10(1)(c) of the act). If the rights and privileges of a director of a law corporation are suspended, or if a director ceases to be a member, the director in question must resign the directorship if the law corporation wishes to continue to provide the services of a barrister or solicitor. The situation might therefore arise in which a law corporation employing one or more lawyers, has no directors because all the directors have resigned as a consequence of having been suspended or of having ceased to be members of the Law Society.

Your Committee considers it undesirable that a corporation without directors should continue to provide the services of a barrister or solicitor.

Recommendation

#17. That under the power granted by paragraph 3.3 of s. 63 of the *Law Society Act*, Convocation make a regulation in the following terms:

It shall be a condition, attached to every certificate of authorization, that the corporation may provide the services of a barrister or solicitor only at such times as the corporation has at least one director who is a member whose rights and privileges are not suspended.

VI : RECOMMENDATIONS - B : MATTERS TO BE REFERRED  
TO OTHER COMMITTEES

B.1. PROFESSIONAL CONDUCT COMMITTEE

B.1.1. Further rules concerning the name of a law corporation

Section A.2 of this report recommends (Recommendation #6) that there be a regulation requiring that the name of every law corporation include the words "Law Corporation" (or its French equivalent) and prohibiting the use of the word "Limited" and the abbreviation "Ltd" (and their French equivalents). Beyond that requirement and that prohibition, however, your Committee suggests that any further rules concerning the names that may be used by law corporations should be formulated by the Professional Conduct Committee and presented to Convocation as part of the Rules of Professional Conduct.

A particular problem may arise in respect of a law corporation which applies for a certificate of authorization in a name which is identical to the name of an existing law corporation. The Rules of Professional Conduct do not prohibit different lawyers (or law firms) from practising under names that are identical. Yet s. 9(1) of the *Business Corporations Act* prohibits identical names for corporations.

Recommendation

#18 That the Professional Conduct Committee be asked to consider what rules should be included in the Rules of Professional Conduct to govern the name of a law corporation, in particular:

(a) Whether, in light of the provisions of s. 9(1) of the *Business Corporations Act*, it is necessary to make a rule in respect of a law corporation which applies for a certificate of authorization in a name which is identical or similar to the name of an existing law corporation.

(b) Whether a law corporation should be entitled to use a "number name".

B.1.2. Other amendments to the Rules of Professional Conduct

The possibility of practising law through a law corporation may require other changes or additions to the Rules of Professional Conduct.

Recommendation

#19 That the Professional Conduct Committee be asked to review the Rules of Professional Conduct to consider whether other amendments are needed to take account of the existence of law corporations.

B.2. INSURANCE COMMITTEE

The possibility of practising law through a corporation raises insurance considerations. By s. 61.3 of the *Law Society Act*, s. 61 applies to law corporations. This means that s. 61 may be interpreted to read as follows:

The Society may make arrangements for its law corporations respecting indemnity for professional liability and respecting the payment and remission of premiums in connection therewith and prescribing levies to be paid by law corporations or any class thereof and exempting law corporations or any class thereof from all or any part of any such levy.

Your Committee has noted the following special considerations:

- By virtue of s. 61.5, a shareholder is liable for the liabilities of a law corporation towards its clients even though the liability may not arise from any act of the shareholder.
- A shareholder must be a member and will therefore normally be insured under the Law Society's mandatory errors and omissions insurance policy. However it is possible that a member who is exempt from payment of the insurance levy (because the member is not herself or himself engaged in practice) may, nonetheless, continue to hold shares in an active law corporation.
- Under Rule 50 of the Rules of the Law Society, a member who is full-time counsel or solicitor "to any corporation" is exempt from payment of the insurance levy. This wording would seem to exempt from the levy a lawyer who works for a law corporation. However, under s. 61.6 of the Law Society Act, a lawyer who works for a law corporation appears to be directly liable to the persons for whom that lawyer provides the services of a barrister or solicitor. Section 61.6 reads:

The liability of an individual carrying on the practice of a barrister and solicitor to persons to whom the individual is providing the services of a barrister or solicitor is not affected by the fact that the practice is carried on as an employee of a law corporation.

It therefore seems inappropriate that a member who is full-time counsel or solicitor to a law corporation should be exempt from the levy.

#### Recommendation

- #20 That the Insurance Committee be asked to consider whether the possibility of practising law through a corporation requires any changes to existing rules and policies in respect of errors and omissions insurance.

#### B.3. LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Section 51 of the Law Society Act governs the Lawyers Fund for Client Compensation. Among other provisions, subsection (3) requires every member to contribute to the fund levy:

Every member, other than those of a class exempted by the rules, shall pay to the Society, for the Compensation Fund, such sum as is prescribed from time to time by the rules.

Subsection (5) authorizes Convocation to make grants from the fund in response to loss sustained in consequence of dishonesty on the part of any member:

Convocation in its absolute discretion may make grants from the Compensation Fund in order to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which the member was or is a trustee, although after the commission of the act of dishonesty the member may have died or ceased to administer the member's affairs or to be a member.

These provisions apply to members, not to law corporations. The section of the act which makes certain references to members applicable to law corporations (s. 61.3) does not include the references to members in s. 51.

There is probably no need for s. 51 to be made applicable to law corporations. Every director and shareholder of a law corporation, and every lawyer employed by a law corporation, must be a member. They will therefore be required to pay the fund levy. Moreover, it seems impossible to imagine any act of dishonesty committed by a law corporation which is not, at the same time, an act of dishonesty by a member -- and therefore within the compensatory ambit of the fund. Your Committee is not certain, however, that under the present wording of s. 51, compensation would be available for those who suffer loss in consequence of dishonesty on the part of an employee of a law corporation where that employee is not a member.

Your Committee notes that subsection 135(1) of the *Alberta Legal Profession Act* expressly makes the Assurance Fund provisions of s. 86 of that act applicable to claims arising from misappropriation or wrongful conversion by a member who is a shareholder, director, officer, or employee of a professional corporation.

#### Recommendation

#21. That the Lawyers Fund for Client Compensation Committee be asked to consider whether there is a need to seek amendments to the *Law Society Act* that would make the provisions of s. 51 of the act applicable to law corporations.

#### B.4. FINANCE AND ADMINISTRATION COMMITTEE

Section 72 of the *Law Society Act* amends paragraph 13 of s. 62(1) so as to permit Convocation to make rules prescribing fees and levies for law corporations. It has been suggested earlier in this report that fees and levies for law corporations be set at a level that will at least cover the cost of the additional regulatory work required.

Fees and levies are currently prescribed under Rule 50. It is suggested that consideration be given to the need for some or all of the following fees:

- (i) A fee to be paid upon making application for a certificate of authorization.
- (ii) A fee to be paid upon making application for a replacement certificate of authorization.

- (iii) A fee to be paid upon making application for a new certificate of authorization in the name of an amalgamated corporation.
- (iv) A fee to be paid upon filing of notice of change in the articles of a corporation.
- (v) An annual corporate filing fee to be paid upon filing the annual certificate of compliance. The annual fee might include, if appropriate, a Legal Aid levy, a Lawyers Fund for Client Compensation levy and a County Library fee.
- (vi) A penalty payable for failure to file a certificate of compliance within the time prescribed by the regulations.
- (vii) A penalty payable for failure to file a Form 2 or Form 3 within the time prescribed by the regulations.

Recommendation

- #22 That the Finance and Administration Committee be asked to consider the fees and levies to be paid by law corporations.

B.5. LEGISLATION AND RULES COMMITTEE

B.5.1. Regulation 573

Regulation 573 of the Revised Regulations of Ontario, 1980, contains all the regulations made under the *Law Society Act* except for those which relate to the Law Foundation of Ontario. It will be necessary to amend certain sections of Regulation 573 in order to include law corporations in the provisions which currently govern members of the Law Society.

Your Committee suggests that the following sections of the regulation will need to be amended:

- Subsection 9(1) (Investigation and hearing of complaints)
- Subsection 9(2) (Investigation and hearing of complaints)
- Subsections 9(5) and 9(6) (Investigation and hearing of complaints)
- Subsection 9(7) (Investigation and hearing of complaints)
- Section 10 (Invitations to attend)
- Section 13 (Books, records and accounts: Interpretation)
- Subsection 14(1) (Books, records and accounts)
- Paragraph 14(6)(a) (Books, records and accounts)

Recommendation

- #23 That the Legislation and Rules Committee be asked to review Regulation 573 to determine what amendments may be necessary to take account of the possibility of practising law through a corporation.

B.5.2.      The Rules of the Law Society

It will be necessary to amend certain of the Rules made under s. 62(1) of the *Law Society Act* to take account of the possibility of practising through a law corporation.

Your Committee suggests that the following rules will need to be amended:

Subrule 34(4) (Finance and Administration Committee)

Rule 37 (Discipline Committee)

Subrule 37A (Complaints Review Committee)

Rule 50A (Cost of investigations)

Recommendation

- #24      That the Legislation and Rules Committee be asked to review the Rules made under s. 62(1) of the *Law Society Act* to determine what amendments may be necessary to take account of the possibility of practising law through a corporation.

B.5.3.      Prescription of Forms

By paragraph 26 of s. 62(1) of the *Law Society Act*, the forms required by regulations are to be prescribed in the Rules made by Convocation. The regulations recommended in this report have employed the wording "in the form prescribed by the rules". It is therefore necessary to make rule prescribing each of the forms that will be required by the regulations.

Your Committee suggests that the following forms will be needed:

Application for a Certificate of Authorization [recomendation #1].

Certificate of Authorization [recommendation #3].

Notice respecting Annual Certificate of Compliance [recommendation #10(a)].

Certificate of Compliance [recommendation #10(b)].

Notice of Application for Permission to Surrender a Certificate of Authorization [recommendation #11(c)].

Recommendation

- #25      That the Legislation and Rules Committee be asked to draft the forms required by the regulations respecting law corporations.

B.5.4. Forms 2 and 3 prescribed by the Rules

Forms 2 and 3 prescribed by the Rules are, respectively, the annual statutory declaration (Form 2) and the annual report of a public accountant (Form 3) required by s. 16(2) of Regulation 573. It is anticipated that s. 16(2) of Regulation 573 will be amended to include law corporations. This will make necessary either the amendment of Forms 2 and 3 or the drafting of versions of Forms 2 and 3 suitable for law corporations.

Recommendation

#26 That the Legislation and Rules Committee be asked to consider Forms 2 and 3 with a view to drafting forms of similar effect suitable for law corporations.

B.6. SPECIAL COMMITTEE ON REFORMS IMPLEMENTATION

The Special Committee on Reforms Implementation is preparing proposed amendments to the *Law Society Act* and to Regulation 573 to give effect to the reforms adopted by Convocation in respect of complaints, discipline and standards of competency. Your Committee suggests that the wording of the proposed amendments should be drafted so as to include reference to law corporations wherever appropriate.

In particular, your Committee notes that Convocation has adopted proposals concerning terms and conditions that might be imposed upon a member's right to practise. Paragraph 3.3 of s. 63 of the *Law Society Act* will give Convocation power to make regulations

permitting the attachment of conditions to a certificate of authorization and prescribing the conditions which may be attached;

Earlier in this report your Committee has recommended a number of conditions that might be attached to certificates of authorization. It is suggested, however, that consideration should be given to prescribing disciplinary or competency conditions that might be attached to the certificate of authorization of a law corporation.

Recommendation

#27 That the Special Committee on Reforms Implementation be asked to consider:

(i) reference to law corporations wherever appropriate in its proposed amendments to the *Law Society Act* and the regulations and rules made under that act; and

(ii) additional conditions that might be attached to the certificate of authorization of a law corporation.

VII : RECOMMENDATIONS - C : MATTERS TO BE REFERRED  
TO THE LAW FOUNDATION OF ONTARIO

C.1. AMENDMENTS TO REGULATION 574

Regulation 574 of the Revised Regulations of Ontario, 1980, is a regulation made by the board of the Law Foundation of Ontario under s. 59 of the *Law Society Act*. It concerns the reporting and remittance of interest from mixed trust accounts.

By s. 61.3 of the *Law Society Act*, s. 57 of the *Law Society Act* (the section which requires members to pay the interest on mixed trust accounts to the Law Foundation) applies to law corporations. It therefore appears necessary to amend Regulation 574 by adding the words "or law corporation" wherever the word "member" appears. It may also be necessary to amend Form 1 which is the annual report required by Regulation 574.

Recommendation

- #28 That Convocation recommend to the board of the Law Foundation of Ontario that the board consider whether it is necessary to make amendments to Regulation 574 and to Form 1 under that regulation so as to include reference to law corporations.

VIII : RECOMMENDATIONS - D : OTHER MATTERS

D.1. PROHIBITION AGAINST UNAUTHORIZED USE OF THE TERM "LAW CORPORATION"

The term "law corporation" is defined in s. 1 of the *Law Society Act* (as amended by s. 66) as a corporation that holds a certificate of authorization issued or renewed under s. 61.2. There is, however, nothing of which your Committee is aware that would prevent a corporation which does not hold a certificate of authorization from using the term.

It appears that a corporation in which the shareholders and directors are not lawyers, and which offers "para-legal" services to the public, could describe itself as a "law corporation".

It would also seem possible for a corporation which once held a certificate of authorization to continue to use the name "law corporation" after the certificate has ceased to be valid.

Your Committee suggests that this matter is best addressed by regulation under the *Business Corporations Act*, once the incorporation provisions of the *Law Society Act* have been proclaimed in force.

Recommendation

- #29 That, when the incorporation provisions of the *Law Society Act* have been proclaimed in force, Convocation request the Provincial Government to prohibit, by regulation under the *Business Corporations Act*, any corporation other than a corporation which holds a certificate of authorization under subsection 61.2(1) of the *Law Society Act* from holding itself out as, or representing itself to be, a law corporation.

Note: Amendment, see page 75



D.2. AMENDMENT OF SECTION 38.1 OF THE Law Society Act TO PROVIDE FOR THE SUSPENSION OF A CERTIFICATE OF AUTHORIZATION

Section 38.1 of the *Law Society Act* describes the disciplinary penalties which Convocation may impose upon a law corporation. It reads:

If a law corporation is found guilty of any of the matters set out in subsection 61j(1) after due investigation by a committee of Convocation, the committee may by order reprimand it or Convocation may by order cancel its certificate of authorization *or may by order suspend its certificate of authorization* for a period to be named or may by order reprimand it or may by order make such other disposition as it considers proper in the circumstances. (Italics added.)

Unlike the corresponding provision in respect of members (s. 34), section 38.1 does not refer to suspending the "rights and privileges" of a corporation. It states that Convocation may "suspend its certificate of authorization for a period to be named". It has been suggested that, if the certificate of authorization is suspended, the corporation no longer "holds" a certificate of authorization. (A contrary argument could be made, on the basis of s. 45(1) to the effect that the corporation continues to "hold" its certificate of authorization. It is noted, however, that s. 45 is not one of the sections which applies "with necessary modifications" to law corporations.)

If it is true that a corporation whose certificate of authorization is suspended under s. 38a no longer "holds" a certificate of authorization, the corporation will no longer be a law corporation (s. 1 as amended by s. 66) and will therefore be outside the disciplinary and regulatory jurisdiction of the Law Society. This is not the case with a member. Where a member's "rights and privileges" are suspended, the member remains a member, subject to the disciplinary and regulatory jurisdiction of the Law Society. The disciplinary suspension of a law corporation will be attended by consequences very different from the consequences which follow the suspension of a member.

The consequences which flow from the fact that a corporation no longer holds a certificate of authorization have been set out in section A.5 of Part V of this report. They will not be repeated here. Suffice it to say that there is the possibility that the interests of clients of the law corporation may be at risk.

Your Committee suggests that it would be preferable if the suspension of a law corporation were to be analagous to the suspension of a member. This can be achieved if language similar to the language of s. 34 of the act is employed in s. 38.1.

Recommendation

#30 That, when the incorporation provisions of the *Law Society Act* have been proclaimed in force, Convocation request the Provincial Government to amend s. 38.1 so that it provides for the suspension of the rights and privileges of a law corporation instead of the suspension of the certificate of authorization.

D.3. AMENDMENT OF SECTION 49 OF THE LAW SOCIETY ACT TO PROVIDE FOR NOTIFICATION TO THE ONTARIO COURT OF JUSTICE IN THE CASE OF LAW CORPORATIONS

In respect of members of the Law Society, s. 49 of the *Law Society Act* provides:

29th May, 1992

Notice of admission to membership and of any cancellation, suspension, resignation, readmission or other change in a member's status in the Society shall be given forthwith by the Secretary to the local registrar of the Ontario Court (General Division) at Toronto who shall keep a record thereof.

Your Committee suggests that similar notification will be needed in the case of law corporations.

Recommendation

#31 That, when the incorporation provisions of the *Law Society Act* have been proclaimed in force, Convocation request the Provincial Government to amend s. 49 to require written notice to the local registrar of the Ontario Court (General Division) at Toronto, immediately following:

- (i) the issuance of a certificate of authorization to a law corporation;
- (ii) the cancellation of the certificate of authorization of a law corporation;
- (iii) the suspension of the certificate of authorization of a law corporation;
- (iv) the suspension of the rights and privileges of a law corporation;
- (v) the surrender of the certificate of authorization of a law corporation.

D.4. INCORPORATION GUIDE

Your Committee suggests that a guide to the incorporation provisions of the *Law Society Act* and the regulations will be useful, if not essential, for members who wish to incorporate law practices.

Recommendation

#32 That, for the guidance of members wishing to incorporate law practices, Convocation consider authorizing the production of a document outlining the steps required by the act and regulations.

ALL OF WHICH is respectfully submitted

DATED this 29th day of May 1992

"M. Cullity"  
Chair

29th May, 1992

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

Appendix A - Part II of the Law Society Act, R.S.O. 1990, c. L.8  
(Marked A-1 - A-6)

Appendix B - Draft Regulations - Incorporating recommendations 1 through 17 in  
the Report of the Special Committee on the Incorporation of Law Practices  
(Marked B-1 - B-8)

The Chair asked that the Report be amended by deleting entirely  
Recommendation #5 on page 10 and draft regulation [41] on page B-2.

It was moved by Maurice Cullity, seconded by Fatima Mohideen, that  
Recommendation #29 on page 41 be amended by adding the words "the inclusion of  
the words "law corporation" in the name of" after the words "Business  
Corporations Act" and by deleting the words at the end of the paragraph "from  
holding itself out as, or representing itself to be, a law corporation".  
Recommendation #29 would now read:

That, when the incorporation provisions of the Law Society Act have been  
proclaimed in force, Convocation request the Provincial Government to  
prohibit, by regulation under the Business Corporations Act, the inclusion  
of the words "law corporation" in the name of any corporation other than  
a corporation which holds a certificate of authorization under subsection  
61.2(1) of the Law Society Act.

Carried

THE REPORT AS AMENDED WAS ADOPTED

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LEGAL AID COMMITTEE

(see Report "Equal Justice for Women & Children" in Convocation file)

It was moved by Susan Elliott, seconded by Fran Kiteley that the Legal Aid Committee Report be considered and not deferred to the June Convocation.

Lost

ROLL CALL VOTE

Bastedo	For
Bellamy	Abstain
Brennan	Against
Campbell	Against
Carter	Against
Copeland	For
Cullity	For
Curtis	For
Elliott	For
Epstein	For
Feinstein	For
Goudge	For
Hickey	Against
Howie	Against
Howland	Against
Kiteley	For
Lamont	Against
Lax	For
McKinnon	For
Mohideen	For
Murphy	Against
Murray	Against
O'Brien	For
D. O'Connor	Against
S. O'Connor	For
Palmer	For
Peters	Against
Rock	For
Scott	Against
Somerville	Against
Strosberg	Against
Thom	For
Topp	Against
Wardlaw	Against
Weaver	Against
Yachetti	Against

29th May, 1992

It was moved by Marc Somerville, seconded by Roger Yachetti that Convocation deal with the issue of the establishment of Family Law Clinics as a discrete issue.

Carried

ROLL CALL VOTE

Bastedo	For
Bellamy	Abstain
Brennan	For
Campbell	For
Carter	For
Copeland	For
Cullity	For
Curtis	For
Elliott	For
Epstein	For
Feinstein	For
Goudge	For
Hickey	For
Howie	For
Howland	For
Kiteley	For
Lamont	Against
Lax	For
McKinnon	For
Manes	For
Mohideen	For
Murphy	For
Murray	For
O'Brien	For
D. O'Connor	For
S. O'Connor	For
Palmer	For
Peters	For
Rock	For
Scace	Abstain
Scott	For
Somerville	For
Strosberg	For
Thom	For
Topp	For
Wardlaw	For
Weaver	For
Yachetti	For

It was moved by Robert Topp, seconded by Robert Carter that the Family Law Tariff Subcommittee Report not be dealt with until the Criminal Tariff Committee report is placed before Convocation.

Not Put

.....

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

.....

29th May, 1992

The Treasurer and Benchers had as their guests for luncheon, Bob Armstrong, Rob Prichard, President, University of Toronto, Gord Coleman and Anne-Marie Stewart, Assistant Deputy Minister, Ministry of Citizenship.

.....

CONVOCATION RECONVENED AT 2:30 P.M.

.....

PRESENT:

The Treasurer, Bastedo, Bellamy, Brennan, Campbell, Carter, R. Cass, Copeland, Cullity, Curtis, Elliott, Epstein, Feinstein, Furlong, Hickey, Howie, Kiteley, Lamont, Lawrence, Lax, McKinnon, Manes, Mohideen, Murphy, Murray, S. O'Connor, Palmer, Peters, Rock, Ruby, Scace, Scott, Somerville, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

.....

NOTICE OF MOTION

Mr. Thom gave notice that he intended to bring a motion before Convocation, to be seconded by Mr. Topp that steps be taken toward the end of changing the name of The Law Society of Upper Canada to The Law Society of Ontario.

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RESUMPTION OF THE DEBATE RE: FAMILY LAW CLINICS

It was moved by Fran Kiteley, seconded by Carole Curtis that no changes be made in the judicare method of service delivery in the area of family law.

Lost

ROLL CALL VOTE

Bastedo	Against
Bellamy	Abstain
Brennan	Against
Campbell	Against
Carter	For
Curtis	For
Elliott	For
Epstein	Against
Feinstein	Against
Kiteley	For
Lamont	Against
Lax	Against
McKinnon	Against
Manes	For
Mohideen	Against
Murphy	Against
Murray	Against
Palmer	For
Peters	For
Rock	Against
Ruby	For
Scott	Against
Topp	For
Wardlaw	Against
Weaver	Against
Yachetti	For

29th May, 1992

It was moved by David Scott, seconded by Colin Campbell that Convocation does not support any change in the delivery of legally aided family law services and suggest to the government that any steps the government may take in this area be in consultation with the Law Society because of its experience with Legal Aid.

Withdrawn

It was moved by Joan Lax, seconded by Lloyd Brennan that Convocation support the establishment of family law clinics as a pilot project.

Lost

ROLL CALL VOTE

Bastedo	For
Brennan	For
Campbell	Against
Carter	Against
Curtis	Against
Elliott	Against
Epstein	For
Feinstein	For
Kiteley	Against
Lamont	For
Lax	For
McKinnon	For
Manes	Against
Mohideen	For
Murphy	Against
Murray	Against
Palmer	Against
Peters	Against
Rock	For
Ruby	Against
Scott	Against
Topp	Against
Wardlaw	Against
Weaver	For
Yachetti	Against

29th May, 1992

It was moved by Philip Epstein, seconded by David Scott that while Convocation does not support any change in the method of delivery of legally aided family law services at this time Convocation is nevertheless desirous of co-operating with the government in respect of its stated intention to establish family law clinics as a pilot project in order to examine and ascertain the advantages and disadvantages of such a system.

Carried

ROLL CALL VOTE

Bastedo	For
Brennan	For
Campbell	For
Carter	Against
Curtis	Against
Elliott	Against
Epstein	For
Feinstein	For
Kiteley	Against
Lamont	For
Lax	For
McKinnon	For
Manes	Against
Mohideen	For
Murphy	For
Murray	For
Palmer	Against
Peters	Against
Rock	For
Scott	For
Topp	Against
Wardlaw	For
Weaver	For
Yachetti	Against

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CONVOCATION ADJOURNED AT 4:55 P.M.

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Confirmed in Convocation this 10th day of July 1992.

Treasurer