

27th October, 1994

MINUTES OF CONVOCATION

Thursday, 27th October, 1994
9:30 a.m.

PRESENT:

The Treasurer (Paul S. A. Lamek), Arnup, Bastedo, Blue, Bellamy, Brennan, Campbell, Carter, R. Cass, Copeland, Cullity, Curtis, Elliott, Farquharson, Feinstein, Finkelstein, Goudge, Graham, Hickey, Howie, Kiteley, Krishna, Lamont, Lawrence, Lax, Lerner, McKinnon, Manes, Moliner, Murphy, Murray, D. O'Connor, Pepper, Ruby, Scott, Sealy, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

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The reporter was sworn.

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IN PUBLIC

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DISCIPLINE COMMITTEE

Re: Henry Desmond MORGAN - London

The Secretary placed the matter before Convocation.

Messrs. Strosberg, Topp, Hickey and Ms. Graham withdrew for this matter.

Ms. Christina Budweth appeared for the Society and Mr. Michael Caroline appeared for the solicitor. The solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 15th, September, 1994, together with an Affidavit of Service sworn 14th October, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th September, 1994 (filed as Exhibit 1). The Acknowledgement, Declaration and Consent signed by counsel for the solicitor, Michael Caroline dated 27th October, 1994 was filed as Exhibit 2. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

27th October, 1994

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert C. Topp, Chair
Michael G. Hickey, Q.C.
Netty Graham

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

Christina Budweth
for the Society

HENRY DESMOND MORGAN
of the City
of London
a barrister and solicitor

Michael Caroline
for the solicitor

Heard: May 25, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 17, 1993, Complaint D128/93 was issued, and on May 11, 1993, Complaint D353a/93 was issued against Henry Desmond Morgan alleging that he was guilty of professional misconduct.

The matter was heard in public on May 25, 1994 before this Committee composed of Robert C. Topp, Chair, Michael G. Hickey, Q.C. and Netty Graham. The Solicitor was present at the hearing and was represented by Michael Caroline. Christina Budweth appeared on behalf of the Law Society.

DECISION

The following particulars of professional misconduct were found to have been established:

Complaint D128/93

2. a) He failed to provide a reply to the Law Society regarding a complaint by Patti Finlay despite letters dated December 21, 1992 and March 1, 1993, and telephone messages left on February 16, 1993 and February 22, 1993.
- b) He failed to satisfy a financial obligation to Peter Card in the amount of \$921.60 incurred in connection with his practice of law.
- c) He failed to provide a reply to the Law Society regarding a complaint by Peter Card, despite letters dated December 4, 1992 and January 26, 1993, and telephone messages left on January 5, 1993 and January 20, 1993.

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- d) He failed to satisfy a financial obligation to Londex Office Products in the amount of \$502.87 incurred in connection with his practice of law.
- e) He failed to provide a reply to the Law Society regarding a complaint by Don Collyer despite letters dated December 4, 1992 and January 26, 1993, and telephone messages left on January 5, 1993 and January 20, 1993.

Complaint D353a/93

The following particular of conduct unbecoming was found to have been established:

- 2. a) On April 26, 1993, he was convicted by Judge D.W. Phillips of five instances of contravening Section 238(1) of the Income Tax Act. With respect to each offense he was fined \$1,500 or in the alternative 30 days imprisonment. Compliance orders were also issued.

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

- b) He failed to file with the Society within six months of the termination of his fiscal year ending January 31, 1993, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the Regulation made pursuant to the Law Society Act.

Evidence

The evidence before the Committee contained the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

- 1. The Solicitor admits service of Complaint D128/93 and is prepared to proceed with a hearing of this matter on May 25, 1994.

II. IN PUBLIC/IN CAMERA

- 2. The parties agree that this matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

The Solicitor has reviewed Complaint D128/93 and this Agreed Statement of Facts and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

- 4. The Solicitor was called to the Bar on April 19, 1963. He practises as a sole practitioner.

Particular 2(a) Failure to Reply to Complaint of Patti Finlay

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5. By letter of complaint to the Law Society dated November 20, 1991, Ms. Patti Finlay alleged that the Solicitor had failed to respond to her telephone calls inquiring about the status of her case. Ms. Finlay alleged that she had not heard from the Solicitor since September 4, 1990. A copy of Ms. Finlay's letter is attached as Exhibit "A" to this Agreed Statement of Facts.

6. By letter dated December 11, 1991, the Law Society forwarded to the Solicitor a copy of Ms. Finlay's letter of complaint. The Solicitor was requested to provide his comments to same within a period of two weeks. A copy of the Society's December 11, 1991 letter is attached as Exhibit "B" to this Agreed Statement of Facts. No reply was received until January 30, 1992.

7. The Law Society left two telephone messages for the Solicitor and forwarded to him a registered letter dated January 13, 1992, requesting his response.

8. By letter dated January 30, 1992, the Solicitor responded to the Law Society. The Solicitor explained that he was retained to act on behalf of Ms. Finlay in relation to an Application for Variation of a child support order. The Solicitor advised that at present, there was an outstanding Order for a trial of the same issue of the quantum as to child support and an application for retroactivity of same. The Solicitor claimed that he scheduled an appointment with Ms. Finlay to review her case. The Solicitor stated that at the meeting, he would seek instructions from Ms. Finlay with a view of taking the matter to trial. A copy of the Solicitor's January 30, 1992 letter is attached as Exhibit "C" to this Agreed Statement of Facts. The Solicitor met with Ms. Finlay on February 8, 1992, and requested that she provide updated financial information.

9. By letter dated February 7, 1992, the Law Society acknowledged receipt of the Solicitor's January 30, 1992 letter. The Solicitor was advised that his response of January 30, 1992 did not adequately reply to the concerns raised in Ms. Finlay's letter of complaint. The Solicitor was requested to reply to Ms. Finlay's allegations that he failed to return her calls. The Solicitor was also requested to advise what action he had taken on Ms. Finlay's case from September 1990 to present. The Solicitor was requested to respond to the Society within two weeks. A copy of the Society's letter of February 7, 1992 is attached as Exhibit "D" to this Agreed Statement of Facts.

10. A Law Society staff employee telephoned the Solicitor on February 25 and 27, 1992 leaving messages for him to return the call.

11. By letter dated March 23, 1992, the Solicitor responded to the Law Society. The Solicitor indicated that after the initial interview with Ms. Finlay, her file was assigned to Lynn Morgan for office purposes. The Solicitor advised that on about September 14, 1990, Lynn Morgan took a leave of absence. A review of the Solicitor's file uncovered that from September 1990 to November 1991 ten telephone messages were left at his office by Ms. Finlay. The Solicitor advised that in two of the calls Ms. Finlay left information only with no request for her calls to be returned and that four calls were in fact returned. The Solicitor advised that he made an appointment with Mrs. Finlay for the following week to review her case. A copy of the Solicitor's March 23, 1992 letter is attached as Exhibit "E" to this Agreed Statement of Facts.

12. A copy of the Solicitor's March 23, 1992 letter was forwarded to Ms. Finlay for her comments.

13. In a letter dated April 15, 1992, Ms. Finlay apparently did not dispute the explanation provided by the Solicitor but stated that the Solicitor did not make an appointment with her the week following his March 23, 1992 letter. A copy of Ms. Finlay's April 15, 1992 letter is attached as Exhibit "F" to this Agreed Statement of Facts.

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14. By letter dated May 6, 1992, Ms. Finlay alleged that she had not spoken to or met with the Solicitor since her letter of April 15, 1992, although she had attended at the Solicitor's office and left the updated information he had requested. A copy of Ms. Finlay's May 6, 1992 letter is attached as Exhibit "G" to this Agreed Statement of Facts.

15. By letter dated August 4, 1992 the Law Society requested that the Solicitor advise as to what steps he had taken to contact Ms. Finlay and to ensure that her interests were being protected. A copy of the Society's August 4, 1992 letter is attached as Exhibit "H" to this Agreed Statement of Facts.

16. A Law Society staff employee spoke with the Solicitor on September 11, 1992 and was advised that he received a direction from a fellow solicitor for the release of Ms. Finlay's file. The Solicitor advised that he would be forwarding his file to Ms. Finlay's new counsel. The Solicitor stated that he would forward his reply to the Society by the beginning of the following week. The Solicitor's reply was not received.

17. On September 18, 1992, a Law Society staff employee telephoned the Solicitor's office and left a message requesting him to return the call. The call was not returned.

18. By letter dated December 21, 1992, the Law Society wrote to the Solicitor requesting that he advise as to what steps he had taken since February 1992 to contact Ms. Finlay and to ensure that her interests had been protected. The Solicitor was informed that this information was required in order for the law Society to evaluate whether or not he failed to serve his client. A copy of the Society's December 21, 1992 letter is attached as Exhibit "I" to this Agreed Statement of Facts.

19. A Law Society staff employee left telephone messages for the Solicitor on February 16 and 22, 1993. The Solicitor failed to return the Society's calls.

20. By registered mail dated March 1, 1993, the Law Society forwarded to the Solicitor a copy of its December 21, 1992 letter. The Solicitor was reminded of his obligation to reply. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. A copy of the Society's March 1, 1993 registered letter and receipt card is attached as Exhibit "J" to this Agreed Statement of Facts. No reply was received.

Complaint of Peter Card L.L.B.

Particular 2(b) - Failure to reply to the Law Society

(c) - Failure to honour a financial obligation

21. By letter dated November 4, 1992, Mr. Peter Card L.L.B. filed a complaint with the Law Society alleging that the Solicitor failed to pay his account for services rendered at his agent. Mr. Card stated that his account had been assessed in September 1992 in the amount of \$921.77. A copy of Mr. Card's November 4, 1992 letter is attached as Exhibit "K" to this Agreed Statement of Facts.

22. By letter dated December 4, 1992, the Law Society forwarded to the Solicitor a copy of Mr. Card's letter of complaint. The Solicitor was requested to provide his comments to same within two weeks. A copy of the Law Society's December 4, 1992 letter is attached as Exhibit "L" to this Agreed Statement of Facts. No response was received.

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23. A Law Society staff employee placed a telephone call to the Solicitor's office on January 5, 1993 requesting that he return the Society's call. The Solicitor did not return the call.

24. A Law Society staff employee telephoned the Solicitor's office on January 20, 1993 and left a message requesting that the Solicitor either return the Society's call or respond to the complaint or a registered letter would be forwarded to him on January 22, 1993.

25. By letter dated January 19, 1993, Mr. Card advised the Society that his account remained unpaid and that he intended to file a Writ of Execution against the Solicitor if his account was still unpaid by the end of the month. A copy of Mr. Card's January 19, 1993 letter is attached as Exhibit "M" to this Agreed Statement of Facts.

26. By letter dated January 26, 1993, the Law Society forwarded to the Solicitor a copy of Mr. Card's letter of complaint. The Solicitor was requested to provide his comments to same within two weeks. A copy of the Law Society's January 26, 1993 letter is attached as Exhibit "N" to this Agreed Statement of Facts. No response was received.

27. By letter dated March 31, 1993, Mr. Card wrote to the Society and advised that the Solicitor had failed to satisfy the Certificate of Assessment. Mr. Card enclosed copies of the Writ of Seizure and Sale dated December 22, 1992, and the Certificate of Assessment. A copy of Mr. Card's March 31, 1993 letter is attached as Exhibit "O" to this Agreed Statement of Facts.

28. A Law Society staff employee spoke with Mr. Card on July 8, 1993, and was advised that the matter remained outstanding.

Complaint of Don Collyer, Londex Office Products

Particular 2(d) - Failure to honour a financial obligation

D128/93

(e) - Failure to reply to the Law Society

29. By letter dated November 12, 1992, Mr. Don Collyer filed a complaint with the Law Society alleging that the Solicitor had failed to pay an account for office stationery in the amount of \$502.87 plus interest. A copy of Mr. Collyer's November 12, 1992 letter is attached as Exhibit "P" to this Agreed Statement of Facts.

30. By letter dated December 4, 1992, the Law Society forwarded to the Solicitor a copy of Mr. Collyer's letter of complaint. The Solicitor was requested to provide his comments to same within two weeks. A copy of the Law Society's December 4, 1992 letter is attached as Exhibit "Q" to this Agreed Statement of Facts.

31. A Law Society staff employee left telephone messages with the Solicitor's secretary on January 5 and 20, 1993 for the Solicitor to return the call. The calls were not returned.

32. By registered letter dated January 26, 1993, the Law Society forwarded to the Solicitor a copy of its December 4, 1992 letter. The Solicitor was reminded of his obligation to reply. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. A copy of the Society's January 26, 1993 letter is attached at Exhibit "R" to this Agreed Statement of Facts. No response was received.

33. A Law Society staff employee spoke with Mr. Collyer on July 9, 1993 and was advised that the Solicitor had still not paid his bill.

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34. By letter dated July 13, 1993, Mr. Collyer advised that his account now total \$631.43. A copy of Mr. Collyer's July 13, 1993 letter is attached as Exhibit "S" to this Agreed Statement of Facts. The Solicitor paid Londex \$184.04 by cheque on February 15, 1991. The Solicitor's position is that this cheque should be applied to the outstanding indebtedness leaving a balance of \$318.83. The Society and the Solicitor agree that the exact amount of the indebtedness is not relevant to the issue before the Committee.

V. DISCIPLINE HISTORY

35. On May 8, 1991, the Solicitor was found guilty of professional misconduct for his failure to reply to the Law Society and breach of undertaking. The Solicitor was reprimanded in Committee.

36. On August 16, 1988, the Solicitor was found guilty of professional misconduct for a misapplication of a client's funds. The Solicitor was reprimanded in Committee.

37. On April 21, 1981, the Solicitor was found guilty of professional misconduct for failing to reply to communications from the Society regarding various Errors and Omissions matters and for failure to make prompt payment of the deductible amount under the Society's Errors and Omissions Insurance Plan. The Solicitor was reprimanded in Committee.

DATED at Toronto this 25th day of May, 1993."

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint 353a/93 and is prepared to proceed with a hearing of these matters on May 25, 1994.

II. IN PUBLIC/IN CAMERA

2. The parties agree that this matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D353a/93 and this agreed statement of facts with his counsel, Michael Caroline, and admits the facts as set out in the Complaint and stated hereafter.

IV. FACTS

4. The Solicitor is 58 years of age. He was called to the bar on April 19, 1963. He practices as a sole practitioner in London, Ontario.

Particular 2(a) Solicitor convicted for five instances of contravention of Section 238(1) of the Income Tax Act.

5. On April 26, 1993, the Solicitor was convicted by the Honourable Judge D.W. Phillips of five separate offenses under the Income Tax Act as follows:

DATE	EVENT	RESULT
July 15th 1992	Charged with: Failure to file For T1, and failure to file financial statements contrary to section 238(1) of the Income Tax Act.	- Convicted April 26th, 1993 - \$1,500.00 fine or 30 days; 6 months to pay. - Compliance order issued.
July 15th 1992	Charged with: Failure to file 1988 Form T1, and failure to file financial statements contrary to section 238(1) of the Income Tax Act.	- Convicted April 26th 1993 - \$1,500.00 fine or 30 days; 6 months to pay. - Compliance order issued.
July 15th 1992	Charged with: Failure to file 1989 Form T1, and failure to file financial statements contrary to section 238(1) of the Income Tax Act.	- Convicted April 26th 1993 - \$1,500.00 fine or 30 days; 6 months to pay. - Compliance order issued.
July 15th 1992	Charged with: Failure to file 1990 Form T1, and failure to file financial statements contrary to section 238(1) of the Income Tax Act.	- Convicted April 26th 1993 - \$1,500.00 fine or 30 days; 6 months to pay. - Compliance order issued.
July 15th 1992	Charged with: Failure to provide books and records; failure to provide accounts receivable, including date of billing and complete names and addresses for the period January 1st 1989 to January 15th 1991 inclusive; contrary to section 238(1) of the Income Tax Act.	- Convicted April 26th 1993 - \$1,500.00 fine or 30 days; 6 months to pay. - Compliance order issued

Particular 2(b) Failure to File for the fiscal year ended January 31, 1993

6. The Solicitor's fiscal year end is January 31st. The Solicitor did not file his Form 2 or 3 within six months of the fiscal year ending January 31, 1993, as required by S16(2) of Regulation 708 under The Law Society Act.

7. A Notice of Default in Annual Filing, dated August 11, 1993 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "1" to this Agreed Statement of Facts.

8. The late filing fee began to accrue on October 8, 1993.

9. By registered mail dated February 25, 1994, the Law Society advised the Solicitor that his rights and privileges as a member had been ordered suspended by Convocation, effective February 25, 1994, as a result of his failure to pay his late filing fee.

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10. By letter dated March 11, 1994, the Solicitor forwarded to the Law Society forwarded to the Law Society his certified cheque in the amount of \$1,660.50 in payment of the late filing fee.

11. By letter dated March 14, 1994, the Law Society advised the Solicitor that his rights and privileges as a member had been reinstated effective March 14, 1994.

12. To date, the Solicitor has not filed the required forms.

V. PRIOR DISCIPLINE

13. On May 8, 1991, the Solicitor was found guilty of professional misconduct for his failure to reply to the Law Society and breach of undertaking. The Solicitor was reprimanded in Committee.

14. On August 16, 1988, the Solicitor was found guilty of professional misconduct for a misapplication of a client's funds. The Solicitor was reprimanded in Committee.

15. On April 21, 1981, the Solicitor was found guilty of professional misconduct for failing to reply to communications from the Society regarding various Errors and Omissions matters and for failure to make prompt payment of the deductible amount under the Society's Errors and Omissions Insurance Plan. The Solicitor was reprimanded in Committee.

Dated at Toronto this 25th day of May, 1994."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Henry Desmond Morgan be suspended for a period of three (3) months to be served concurrently on each particular upon which a finding of professional misconduct or conduct unbecoming was made in Complaint 353A/93.

In regard to Complaint D128/93, your Committee recommends no additional penalty if the Solicitor has filed his forms 2/3 when this matter is dealt with in Convocation. If the Solicitor has not filed his forms 2/3 by that time it is the recommendation of your Committee that he be suspended for a period of one (1) month and thereafter until he is in full compliance with the requirements of this Statute.

REASONS FOR RECOMMENDATION

It is the view of your Committee that the Solicitor's conduct and his discipline history require that a suspension be imposed in order to satisfy general deterrence. In this particular case your Committee is also concerned that the previous reprimands in Committee seem to have had little if any effect upon the Solicitor. Your Committee therefore recommends the period of three (3) months suspension both in general deterrence directed towards other members of the profession and in specific deterrence directed towards this Solicitor.

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Your Committee is of the view that the penalty must have a sufficient impact upon the Solicitor to make him fully aware of his obligations to conform to all of the Law Society Rules. Your Committee was not of the view that a further reprimand in Committee as urged upon your Committee by counsel for the Solicitor was appropriate. In fact your Committee found that the recommendation of counsel for the Law Society that the Committee should impose a three (3) month suspension was in our view the very lowest recommendation that could be accepted. In fact, your Committee considered a much longer period of suspension but for the recommendation of the Law Society's counsel, your Committee would have imposed a period of six (6) months suspension.

In addition to the three (3) months suspension, the Law Society's counsel urged upon your Committee an award of costs in the sum of \$2,000.00. In this matter evidence was called as to the disastrous financial condition of the Solicitor and therefore your Committee decided that costs were not appropriate under these circumstances. We are cognizant that the penalty of three (3) months suspension will have a financial impact upon the Solicitor and to impose a further burden of \$2,000.00 in costs when it is clear to your Committee that the Solicitor cannot pay seems to your Committee to be imposing a penalty which could only lead to the further suspension of the Solicitor for non-payment and upon these facts we find that penalty would be excessive.

Henry Desmond Morgan was called to the Bar on the 19th day of April, 1963.

ALL OF WHICH is respectfully submitted

DATED this 15th day of September, 1994

Robert C. Topp
Chair

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

Counsel for the Society asked that the Report be amended on page 13 under the heading of Recommendation as to Penalty by reversing the Complaint numbers in the first and second paragraphs so that the first paragraph refers to Complaint D128/93 and the second paragraph refers to Complaint 353A/93.

There were no submissions and the Report was adopted.

It was moved by Mr. Howie, seconded by Mr. Brennan that the Recommendation as to Penalty be adopted that is, that the solicitor be suspended for a period of 3 months concurrently respecting Complaint D128/93 and an additional suspension of 1 month be added if the filings were not made by the close of business today.

Counsel, the reporter and the public withdrew.

It was moved by Ms. Curtis but failed for want of a seconder that the penalty include costs in the amount of \$2,000 with a year to pay.

The Recommendation as to Penalty was adopted.

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Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for 3 months concurrently and an additional month if the filings were not made by the close of business today.

Counsel retired.

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IN CAMERA

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer reported on the arrangement made with the Toronto Dominion Bank regarding trust fund account interest.

MOTIONS - Committee Appointments

It was moved by Mr. Lamont, seconded by Ms. Weaver THAT Shirley O'Connor be added as a member of the Women in the Legal Profession Committee.

Carried

It was moved by Mr. Lamont, seconded by Ms. Weaver THAT Robert Carter continue as the Law Society's representative on the Ontario Judicial Appointments Committee.

Carried

It was moved by Mr. Scott, seconded by Mr. Topp THAT Don Lamont and Ken Howie be added as members of the Finance and Administration Committee.

Carried

CALL TO THE BAR

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

Arnold Hyman Bornstein	35th Bar Admission Course
Mary Alison Crowe	Special, Transfer, Nova Scotia
Paul James Gibney	Special, Transfer, British Columbia
Thomas Edward Pittman	Special, Transfer, Nova Scotia
Edna Jennifer Warren	Special, Transfer, Alberta

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

It was moved by Ms. Curtis, seconded by Ms. Moliner that the Reports listed in paragraph 4 of the Agenda (Reports to be taken as read) be adopted.

Carried

Admissions and Membership (2 Reports) - Item B.-B.4.3. of Committee Meeting on October 13, 1994 withdrawn

Bicentennial
Communications
County and District Liaison
Discipline
Equity in Legal Education and Practice
Finance and Administration (Items B.-3. and 4. deferred to October 28, 1994)
Investment
Lawyers Fund for Client Compensation
Legal Aid

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Legal Education
Legislation and Rules
Libraries and Reporting (Public Report)
Professional Conduct
Professional Standards
Research and Planning
September Draft Minutes
Specialist Certification Board
Women in the Legal Profession

COMMITTEE REPORTS

ADMISSIONS AND MEMBERSHIP COMMITTEE

Meeting of October 26, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS AND MEMBERSHIP COMMITTEE begs leave to report:

Your Committee met on Wednesday the 26th of October, 1994 the following benchers being present:

Ms. S. Elliott, Ms. N. Graham and Mr. S. Goudge.

Also present: M. Angevine

B.
ADMINISTRATION

B.1. EXAMINATION RESULTS - TRANSFER EXAMINATION

B.1.1. The following candidates have successfully completed the September 1994 Transfer Examination:

Mary Alison Crowe	Province of Nova Scotia
Paul James Gibney	Province of British Columbia
Thomas Edward Pittman	Province of Nova Scotia
Sonia J. Struthers	Province of Quebec
Edna Jennifer Warren	Province of Alberta

Noted

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

B.2.1. Transfer from another Province

B.2.2. The following candidates having successfully completed the 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 Thursday October 27, 1994:

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Mary Alison Crowe
Paul James Gibney
Thomas Edward Pittman
Edna Jennifer Warren

Approved

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

C. Campbell
Chair

THE REPORT WAS ADOPTED

BICENTENNIAL COMMITTEE

Meeting of October 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The BICENTENNIAL COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of October, 1994 at 11:00 a.m., the following members being present: Wardlaw (Chair), and O'Brien. Also in attendance were Susan Binnie, Elise Brunet and Ann-Marie Langlois.

C.
INFORMATION

1. BICENTENNIAL HISTORY PROJECT

The Committee received a report from author Christopher Moore describing the progress of his work on the bicentennial history volume. A report was also received from the consulting editor, Ramsay Derry, reviewing the negotiations with potential publishers which are currently underway.

2. COIN PROJECT

Susan Binnie reported that Kenneth Jarvis is keeping in touch with officials of the Canadian Mint on the subject of a bicentennial coin for 1997 to commemorate the founding of the Law Society. The Committee agreed to ask Mr. Jarvis whether the Law Society would be advised to approach the Minister responsible, either directly or through an intermediary.

3. TRAVELLING BICENTENNIAL EXHIBIT

Elise Brunet, the Law Society Curator, reported that she will begin intensive work on a travelling exhibit for the Bicentennial in October, 1995.

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The Committee recognized that the responses from County and District Law Associations to the recent announcement of the travelling bicentennial exhibit had been lower than anticipated. The discussion led to the conclusion that the Committee needs to work to generate interest and involvement among the members in planning local bicentennial events. An approach was discussed that is designed to encourage the creation of local bicentennial committees (consisting of members of the profession and others willing to assist in organizing local bicentennial events). This proposal was received and materials will be drafted to send to the County and District Law Association Presidents.

4. OTHER BICENTENNIAL PROJECTS

Other projects, both approved and potential in form, were discussed that could assist in general and local bicentennial planning. They included an equity project for the profession (approved in principle by Convocation on September 9, 1993), a project to produce a bicentennial video, and the creation of bicentennial materials, such as posters and banners. Such materials could provide a unifying theme as well as publicity for local projects. The Committee asked the staff to investigate several of these suggestions.

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

J. Wardlaw
Chair

THE REPORT WAS ADOPTED

COMMUNICATIONS COMMITTEE

Meeting of October 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your committee met on Thursday, the 13th of October, 1994, the following members being present: Denise Bellamy (Chair), Lloyd Brennan, Stuart Thom, Carole Curtis, Julaine Palmer, Allan Lawrence, Christopher DuVernet and Hope Sealy. Staff in attendance: Gemma Zecchini, Serena Chiang.

A.
INFORMATION

1. Lawyer Referral Service Program Evaluation.

In March 1995 the Lawyer Referral Service will celebrate its twenty-fifth anniversary. Throughout its many years of operation it has never had the benefit of a thorough evaluation. At the conclusion of the Communications Department's

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budget discussions with the Priorities & Planning Committee last February, then Chair Thomas Bastedo advised that the Communications Committee should explore options for enhancing the revenue of the Lawyer Referral Service and make suitable recommendations when submitting a draft budget for the 1995/96 fiscal year.

Recommendations as to potential revenue enhancements should be made within the context of an overall evaluation of the Lawyer Referral Service. The LRS is approaching its twenty-fifth anniversary and may benefit from a review that seeks to answer the following questions:

- a. Does the mandate/objective of the LRS continue to be relevant after almost 25 years of operation? Should it be redefined? What is the program's mission and who are its target publics?
- b. Given the lifting of restrictions on lawyer advertising and the proliferation of yellow page ads offering specialty legal services, is the program still needed to put people in touch with lawyers who perform certain legal services in their community?
- c. Is the program consistent with the Law Society's draft role statement? If not, are there other institutions that may wish to take it over?
- d. Do participating members value the Service? What improvements would they suggest? Would they be willing to increase their contributions either through increased membership fees, specialty panel fees or percentage fees?
- e. Does the client community value our service? How do representatives of women's shelters, community organizations and governmental organizations who refer clients to the LRS view the service? Is it relevant to their needs?
- f. Is the program being run at optimum efficiency? What service/operational changes or enhancements should be made? What evaluation methods should be instituted to insure that the program is meeting past objectives or newly defined objectives?
- g. How can the LRS diversify its client base from lower-income to middle income clients keeping in mind ongoing budget limitations?

Purposes of the evaluation

In canvassing these issues the Committee would be in a better position to determine:

- on-going need for the service
- perception of the service on the part of clients/service providers/referring agencies--how the community values what we provide and how lawyers value the service
- whether Convocation wishes to renew its commitment to the LRS given competing priorities and the Society's new role statement
- potential and options for further revenue generation

Based on the findings and recommendations issuing from the review, Convocation would be in a better position to determine:

- whether benchers wish to renew their commitment to the LRS given competing priorities for resources
- whether the LRS satisfies criteria set out in the draft role statement and should continue to be offered by the Society

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Assuming the evaluation resulted in a continuation of the LRS, it would be used by management to:

- set future priorities for the program
 - implement changes to the service that are responsive to the needs of clients and service providers (lawyers)
 - improve program evaluation methods and set targets and benchmarks for successful completion of objectives
 - draft marketing and budget plans
2. Call statistics

The Lawyer Referral Service received 14,815 calls in September. The Dial-a-Law program received 18,434 calls or an average of 614 calls per day.

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

D. Bellamy
Chair

THE REPORT WAS ADOPTED

COUNTY AND DISTRICT LIAISON COMMITTEE

Meeting of October 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

On Thursday, the 13th of October, 1994 at 11:30 a.m., the following members were present: R.C. Topp (Chair), T. Carey and D. Murphy. The following members of the County and District Law Presidents' Association Executive were in attendance: H. Arrell, D. DiGiuseppe, R. Gates, S. Foley, D. Lovell, J. Morissette, M. O'Dea and R. Sonley. Staff in attendance were: G. Howell and A. John (Secretary).

1. PRACTICE IN ONTARIO BY NON-RESIDENT MEMBERS

Complaints have been received by the Law Society about lawyers who are residents in Manitoba and who are members of the Bar both in Manitoba and in Ontario. These lawyers are members in good standing of the Law Society of Upper Canada and pay 100% of the annual fee. However, they are exempt from the insurance levy on the basis that they are covered by their Manitoba Errors and

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Omissions Policy. Because the difference between the insurance levy in Ontario and in Manitoba is very great, the lawyers in the Kenora area are concerned that they are unable to compete on a "level playing field". The members of the County and District Liaison Committee have asked the Insurance Committee to review the exemption provided to Manitoba lawyers in light of the particular problems faced by practitioners in Kenora.

2. NOVEMBER 1994 PLENARY

The Committee wishes to remind all benchers that the November Plenary will take place in Toronto on November 9, 10 and 11, 1994. Information packages have been sent out in advance. All benchers are encouraged to attend and participate in the sessions.

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

R. Topp,
Chair

THE REPORT WAS ADOPTED

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of October 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your committee met on Thursday, the 13th of October 1994, in a joint meeting with the Women in the Legal Profession Committee, the following persons being present:

From the Equity in Legal Education and Practice Committee: Marie Moliner (Chair), Dennis O'Connor, Shirley O'Connor, Nora Angeles-Richardson (also a member of the Women in the Legal Profession Committee), André Chamberlain, Susan Charandoff, Audrea Golding, Judith Keene, Arlene Minott, Marilyn Pilkington and Ramneek Pooni.

From the Women in the Legal Profession Committee: Paul Copeland (Chair), Patricia Hennessy and Bridgid Yee-Wai Luke.

Staff: Donald Crosbie, Alexis Singer, Lance Talbot and Gemma Zecchini.

C.
INFORMATION

- C.1 A Discussion of the Relationship Between the Equity in Legal Education and Practice Committee and Women in the Legal Profession Committee. Should they be merged?
- C.1.1 The two committees considered the arguments for and against merging. The arguments for merging include the fact that "Equity" issues include "Women's" issues, and tend to benefit from the same type of analysis and policy resolution. The arguments against merging include concern that the issues may become diluted as some equity issues are quite distinct from some women's issues. The agendas for 1994-95 may be somewhat different; although the Women in the Legal Profession Committee has an interest in the educational program which will accompany Rule 28, (the Equity in Legal Education and Practice Committee's priority) it has other priorities for 1994-1995 as well.
- C.1.2 The two committees considered the following options: having one joint committee with subcommittees for each of the women's and individual equity group issues; having both committees continue to function separately but work together where both have common interests; and having both groups continue to function separately with joint meetings scheduled from time to time.
- C.1.3 The two committees asked the staff to prepare a list of agenda items for each committee. Once that information is available, another joint meeting can be scheduled to further consider options.
- C.2 Rule 28
- C.2.1 The two committees discussed the nature and substance of the educational program which will be provided to assist the profession in understanding its obligations under Rule 28 dealing with non discrimination. Gemma Zecchini, the Director of Communications indicated that the Rule and Commentary went into the Benchers Bulletin for distribution in October and advised that she will assist with the timing and format of the educational program to be presented.
- C.2.2 It was agreed that the focus should be on developing an educational program that would encourage members to participate because of the value it would provide them in dealing with the *Human Rights Code*, Employment Equity and Rule 28. A mandatory educational program might not be perceived by the profession as helpful at this time.
- C.2.3 The committee considered the various forms that a program could take, acknowledging the importance of accomplishing two objectives namely (a) making members aware of their obligations under Rule 28 and (b) assisting members to change behaviour which is in contravention of Rule 28. One of the options is a Continuing Legal Education program prepared by experts in the field with material and a tape of the program available to all law firms. Another option is a combination of a Continuing Legal Education program setting out the law delivered to law firms by trained instructors or facilitators in a format similar to the video program prepared by the Errors and Omissions Committee on loss prevention in 1992. The use of such a program would allow facilitators to discuss issues arising from the various vignettes which would appear on the video.

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- C.2.4 The two committees acknowledged that the Employment Equity Legislation recently passed by the Ontario Government encompasses much of Rule 28 although Rule 28 deals with all professional dealings of members not just employment. As many of the large law firms will be required to comply with Employment Equity legislation, the committees considered the possibility of working with some of the larger law firms to develop a package to assist smaller law firms in preparing and implementing their Employment Equity plans where required. It was recognized that firms which need not comply with Employment Equity legislation still must comply with the requirements of Rule 28 and will be greatly assisted by educational packages put together by the Law Society tailored to the needs of smaller firms unable to afford to hire consultants to assist them.
- C.2.5 As the Equity in Legal Education and Practice Committee will have carriage of the educational program, that committee agreed that the subcommittee which was struck in September to examine the educational materials consisting of Marie Moliner, Stephen Goudge, Audrea Golding, André Chamberlain, Sharon Ffolkes-Abrahams and Ramneek Pooni should be expanded to include Judith Keene, Bridgid Luke, Patricia Hennessy, Nora Richardson and Alexis Singer. The Equity Committee has received the paper prepared by Joanne St. Lewis on the Employment Equity legislation and the subcommittee will consider it along with Judith Keene's paper and the letters received in response to the earlier draft of Rule 28 circulated to the Profession in 1993.

ALL OF WHICH is respectfully submitted

DATED this 27th day of October 1994

M. Moliner,
Chair

THE REPORT WAS ADOPTED

INVESTMENT COMMITTEE

Meeting of October 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of October, 1994 at nine-thirty in the morning, the following members being present: Mr. Wardlaw (Chair) and Ms. Kiteley. Messrs. John Seagram and Rowland Bell of Martin, Lucas and Seagram, the Law Society's independent investment counsel, were also present. Staff member present was David Carey.

27th October, 1994

B.
ADMINISTRATION

1. Investment Report

The Deputy Director of Finance presented to the Committee the investment report summaries for the various Law Society Funds together with supporting documentation for the month ended September 30th, 1994 (Schedule A).

Approved

2. Investment Activity for September 1994 - Lawyers' Professional Indemnity Company

<u>Purchase</u>	<u>Broker</u>	<u>Current Market</u>	<u>Yield</u>
\$1,000,000 8.5% CANADA MTGE & HOUSING CORP. Bonds due Dec. 1/1999	Midland Walwyn	99.940	8.510%

This investment was made with the Director of Finance's approval. The Committee was asked to ratify the purchase of this investment.

Ratified

3. Other Matters

It was recommended by our investment counsel to purchase the following portfolio investments to improve yield and better match liabilities:

Lawyers' Fund for Client Compensation
\$750,000 Gov't of Canada 7.5% July 1, 1997
\$750,000 Gov't of Canada 8.5% March 1, 2000

Lawyers' Professional Indemnity Company
\$750,000 Gov't of Canada 6.5% August 1, 1996
\$750,000 Gov't of Canada 6.5% September 1, 1998
\$500,000 Gov't of Canada 8.5% March 1, 2000

Approved

ALL OF WHICH is respectfully submitted

DATED this 28th day of October, 1994

J. Wardlaw,
Chair

27th October, 1994

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

- Item B.-1. - Copy of the Investment Report Summaries for the various Law Society Funds together with supporting documentation for month ended September 30th, 1994. (Schedule A)

THE REPORT WAS ADOPTED

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Meeting of October 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 13th of October, 1994, at 10:30 a.m., the following members being present: N. Graham (Vice-Chair in the Chair), S. Lerner, K. Howie, D. Murphy and R. Wise; D. McKillop, D. Shand and H. Werry also attended.

A.

POLICY

1. REVISIONS TO REGULATION 708 AND FORMS 4 AND 5 - FINAL DRAFTING

The amendments suggested by this Committee were referred to the Legislation and Rules Committee for final drafting. Counsel, Walter M. Traub, was retained by the Legislation and Rules Committee to comment on the changes. A letter from counsel dated August 23, 1994, with his comments and recommendations and the Form 4 (including Schedule A), Form 5, Section 15.2 of Regulation 708 and draft wording for Section 12 of Schedule A to Form 3 with his amendments (if any) highlighted were before the Committee.

The Committee considered Mr. Traub's suggestions and adopted his recommendations with minor modifications. The Committee and staff now believe that public protection has been achieved while reducing in some respects the burden on the profession of complying with the present Regulation and Forms. Changes made as a result of Mr. Traub's and the Committee's suggestions have been highlighted.

IT IS RECOMMENDED that the revisions to Section 15.2 of Regulation 708 and Forms 4 and 5 attached to this report be approved and referred to the Legislation and Rules Committee for final drafting. For reference, a copy of Mr. Traub's letter of August 23, 1994 is also attached. (Pgs. A1 - A14)

B.
ADMINISTRATION

1. REFEREES FEES

The Committee previously recommended to Convocation in February 1994 that in order to engage practising members as Referees, especially sole practitioners, remuneration should be increased from \$600 per day to \$800 per day for hearings and preparation of their Reports. In the past retired judges and lawyers have primarily acted as Referees and they do not have the high overhead that practising members would have. Referees fees have not increased since April 1991.

Counsel for claimants are generally awarded \$800 per day for the hearing plus \$500 for preparation. It was felt by the Committee that the Referee should not be paid less than the claimants counsel are paid. Further, the rate allowed for counsel is modest.

Referees expenses are paid out of the Lawyers Fund for Client Compensation and therefore an increase at this time will not have impact on the 1994/1995 annual fees of the members.

Convocation in February 1994 referred this matter to the Special Committee on Lawyers Fees which was subsequently disbanded. At the June 1994 meeting of the Committee, the Chair requested that this item be reconsidered. The Committee decided the matter should be deferred to this month's meeting.

The Committee, without reference to the merit of the proposal, felt it was ill-timed in view of the serious financial concerns facing the profession at this time. The Committee also felt that remuneration of \$600 per day for Referees was not unreasonable when considering fees paid to counsel retained by the Law Society in some matters and what board members or arbitrators paid by the Provincial or Federal governments were receiving on a per diem basis.

IT IS RECOMMENDED that the current proposal to increase Referee fees be rejected but that the matter be revisited concurrent with the Committee's preparation of the 1995/96 fiscal year budget for the Lawyers Fund For Client Compensation.

2. NEW COMMITTEE MEMBERS AND ASSIGNMENT TO SUB-COMMITTEES

Mr. Kenneth E. Howie, Q.C. was appointed to the Committee this fall and has been assigned to the Review Sub-Committee.

C.
INFORMATION

1. STAFF MEMORANDA

The Staff Memoranda that were approved by the Review Sub-Committee were before the Committee for information purposes only with the grants to be paid from the Fund shown on Schedule "A" of this report.

2. Copies of the Financial Summary for June 1994 and graphs showing the relationship between claims made and claims outstanding with limits applied and without limits applied are attached.
(Pgs. C1 - C4)

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3. Accounts approved by staff in September amounted to \$5,404.

4. This Committee recommended in March 1992 in its Report to Convocation that the Rules of Professional Conduct be amended to require two separate lawyers to act on a private mortgage placement. This recommendation was referred to another Committee for further study. In June 1994 the Professional Conduct Committee proposed to Convocation that a two lawyer rule similar to this Committee's earlier proposal again be considered. Convocation referred the matter back to the Professional Conduct Committee. A joint meeting with Professional Conduct and the Insurance Committee was held on October 12, 1994. Representatives of the Canadian Bar Association, the Ontario Real Estate Lawyers Association and the County & District Law Presidents' Association were invited to the meeting and provided their views on the proposed rule. A report summarizing those views is being prepared and will be circulated to joint Committee members for comment and further discussion.

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

C. Ruby,
Chair

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

- Item C. - 1. - Copy of the Staff Memorandum re: Grants approved by the Review Committee and by the Lawyers Fund for Client Compensation Committee as at October 13, 1994. (Schedule "A")
- Item A. - 1. - Copy of revisions to section 15.2 of Regulation 708, Forms 4 and 5 and copy of letter from counsel, Walter M. Traub dated August 23, 1994 re: Law Society Act: Regulation 708. (marked A-1 - A-14)
- Item C. - 1. - Copies of the Financial Summary for June 1994 and graphs. (marked C1 - C4)

THE REPORT WAS ADOPTED

LEGAL AID COMMITTEE

Meeting of October 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of October, 1994, the following members being present: Stephen Goudge, Chair, L. Brennan, M. Buist, J. Campbell, S. Cooney, P. Copeland, C. Curtis, D. Fox, D. Fudge, R. Lalande, P. Peters, A. Rady, M. Stanowski, B. Sullivan.

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

A.
POLICY

A.1 STRATEGIC PLANNING SUB-COMMITTEE

A.1.1. A Strategic Planning Sub-Committee has been struck to discuss the Plan's priorities and strategic planning for the next year. A list of members of the Sub-Committee is attached as SCHEDULE A.

A.2 REPORT OF THE AREA DIRECTOR SELECTION SUB-COMMITTEE

A.2.1 The Area Director Selection Sub-Committee was struck to review and make recommendations concerning the process used for selecting Area Directors. The Legal Aid Committee unanimously recommends that Convocation adopt the Report of the Area Directors Selection Sub-Committee which is attached as SCHEDULE B.

B.
ADMINISTRATION

B.1 PILOT PROJECT STEERING COMMITTEE

B.1.1 The Committee received and endorsed the report of the Pilot Projects Steering Committee which recommends that the Limited Service Model be established in Toronto, the Judicare Equivalent Model be established in Scarborough and the Women's Family Law Centre be established in Ottawa.

B.2 NEW AREA DIRECTOR - PEEL

Gerry Marsden is retiring as Area Director for Peel. It is recommended that Maureen Hastings, who has been the Deputy Area Director in Peel since 1991, be appointed to replace Mr. Marsden. Ms. Hastings' curriculum vitae is attached as SCHEDULE C.

B.3 ONTARIO LEGAL AID PLAN - STATEMENT OF INCOME AND EXPENDITURE FOR THE FIVE MONTHS ENDED AUGUST 31, 1994

B.3.1 The Statement of Income and Expenditure for the Five Months Ended August 31, 1994 is attached hereto as SCHEDULE D.

B.4 REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS FOR THE MONTH OF SEPTEMBER, 1994

B.4.1 The Reports on the Payment of Solicitors Accounts for the Month of September, 1994 is attached as SCHEDULE E.

B.5 REPORT ON THE STATUS OF REVIEWS IN THE LEGAL ACCOUNTS DEPARTMENT FOR THE MONTH OF SEPTEMBER, 1994

B.5.1 The Report on the Status of Reviews in the Legal Accounts Department for the Month of September, 1994 is attached as SCHEDULE F.

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B.6 AREA COMMITTEES - APPOINTMENTS AND RESIGNATIONS

APPOINTMENTS

Frontenac

Ann Tierney, solicitor

Kent

Janet McGuigan-Kelly, solicitor

David E. Jacklin, solicitor

Lawrie M. Edinboro, behaviour counsellor

RESIGNATION

Manitoulin & Sudbury

Joseph Fragomeni

DECEASED

Essex

John Riggs

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

S. Goudge,
Chair

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

- Item A.-A.1 - List of members of the Strategic Planning Sub-Committee. (Schedule A)
- Item A.2-A.2.1 - Report of the Sub Committee established to review and make Recommendations concerning the Process used for selecting Area Directors. (Schedule B)
- Item B.-B.2 - Curriculum vitae of Maureen Hastings. (Schedule C)
- Item B.-B.3.1 - Statement of Income and Expenditure for five months ended August 31, 1994. (Schedule E)
- Item B.-B.5.1 - Report on the Status of Reviews in Legal Accounts Department for month of September, 1994. (Schedule F)

THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

Meeting of October 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE requests leave to report:

The Committee met on Thursday, the 13th of October, 1994, at 10:30 a.m.

The following members were in attendance: Philip Epstein (Chair), Susan Elliott (Vice-chair), Colin McKinnon (Vice-chair), Ian Blue, Lloyd Brennan, Dean Donald Carter (Queen's University), Vern Krishna, Joan Lax, Allan Lawrence, Laura Legge, Dean Marilyn Pilkington (Osgoode Hall Law School), Stuart Thom and Mohan Prabhu (non-Bencher member). The following staff were in attendance: Marilyn Bode, Alexandra Rookes, Sophia Sperdakos and Alan Treleaven.

A.
POLICY

There are no policy recommendations to report this month.

B.
ADMINISTRATION

There are no regular business and administration recommendations to report this month.

C.
INFORMATION

C.1 BEQUEST OF THE HONOURABLE WILLIAM HOWLAND ESTATE

C.1.1 The Law Society Foundation has been named as a beneficiary in the Will of the late Honourable William Howland. (Note: The Law Society Foundation is not the "Law Foundation".) The Foundation is to receive a bequest described in the Will as follows: "...to be used for the purposes of furthering legal education".

C.1.2 The Trustees of the Law Society Foundation have asked for a recommendation as to the appropriate disposition of the bequest by the Law Society Foundation.

C.1.3 The Legal Education Committee decided to strike a special subcommittee to consider all of the issues and to report back to the Legal Education Committee. The members of the subcommittee are Ian Blue, Lloyd Brennan, Susan Elliott and Joan Lax.

C.2 MANDATORY CONTINUING LEGAL EDUCATION

C.2.1 The Mandatory Continuing Legal Education Subcommittee, chaired by Susan Elliott, continues to invite interested Benchers to participate in its work. To date, Tom Bastedo, Ian Blue, Lloyd Brennan, Colin Campbell, Philip Epstein, Stephen Goudge, Netty Graham, Vern Krishna, Sam Lerner, Colin McKinnon, Stuart Thom and Mohan Prabhu (non-Bencher member of the Legal Education Committee) have agreed to participate. The Subcommittee is also including participation from the Canadian Bar Association-Ontario, the County and District Law Presidents Association and other members of the practising bar.

C.2.2 Sophia Sperdakos is the Mandatory Continuing Legal Education Project Director. Ms. Sperdakos joined the Bar Admission Course Faculty on March 1, 1990, and has taken a leave to assume her new position.

- C.2.3 The Subcommittee, as a whole, is settling on process and goals. The work of the Subcommittee is being apportioned to working groups that will periodically report to the Subcommittee as a whole.
- C.3 ARTICLING SUBCOMMITTEE
- C.3.1 The Subcommittee met at 8:00 a.m. on September 23. In attendance were Marc Rosenberg (Chair), Ian Blue, Maurice Cullity, Mohan Prabhu, Janne Burton, and Jay Rudolph. The two newly elected student representatives from the Phase One, 1994 class, Kathy Nedelkopoulous and Susan So, also participated. Staff members attending were Marilyn Bode, Sue McCaffrey (Professional Standards Director) and Alan Treleaven.
- C.3.2 The Subcommittee gave conditional approval to a further 2 applications from members to serve as articling principals for the 1993-94 articling year. To September, approximately 1376 members have applied to serve as principals for the 1993-94 articling year. Of those, 1366 applications have been approved. One application was denied as the member was found to be dishonest by a referee of the Lawyers' Fund for Client Compensation. The remaining applications have been deferred as an audit investigation, discipline investigation or Lawyers' Fund For Client Compensation hearing on the member is pending.
- C.3.3 The Subcommittee gave conditional approval to a further 97 applications from prospective articling principals for the 1994-95 articling term. To September, approximately 1459 members have been approved to serve as principals for the 1994-95 articling term.
- C.3.4 The Subcommittee also gave conditional approval to 20 applications from prospective articling principals for the 1995-96 articling term.
- C.3.5 The Subcommittee gave special consideration to the applications of six members applying for the 1994-95 articling term. Four of the six applications were approved without condition, and one application was approved with a condition. One member's application was denied. That member was found to be dishonest by a referee of the Lawyers' Fund for Client Compensation. The member had been denied approval by the Articling Subcommittee and the Legal Education Committee for the 1993-94 articling term. The sixth application was consideration of the request by a member approved to serve as an articling principal for the 1994-95 articling term for the removal of a condition of approval. The condition for approval was the member participating in the Practice Review Program. Members of the Subcommittee who considered the member's application in April, 1994 disqualified themselves from the discussion and decision-making of the Subcommittee. Sue McCaffrey, Professional Standards Director, attended the meeting to answer any questions about the Practice Review Program. The Subcommittee reconsidered the condition for approval. The Subcommittee denied the member's request for removal of the condition.
- C.3.6 The Subcommittee considered the appeal from an abridgment application made to the Articling Director. The appeal was denied.
- C.3.7 The first information item was an update from the Articling Director on the development of a script for an Articling Videotape. The Subcommittee was advised that a script would be available for review at its October or November, 1994 meeting.

- C.3.8 The second information item was the final Notice to the Profession describing the credentials of Joint Committee on Accreditation students. The Notice will be published in the Ontario Reports in the near future. A copy of the Notice is attached. (page 1)
- C.3.9 The third information item was an update from the Articling Director on a notice placed by "One Stop Consultants" on Law Society bulletin boards. The notice was directed at articling students without jobs and offered resume writing and interview skills assistance. A member of the Subcommittee had attended at the office of the company in August and had found no name plate on the door. Occupants of other offices in the building advised the member of the Subcommittee that the proprietor of the business attended the office only sporadically, at night. Phone calls to the company by the member of the Subcommittee were not returned. The notice regarding the service had been removed from Law Society bulletin boards since the summer of 1994. It appeared that the company or service was no longer operating. The Subcommittee decided not to pursue the matter further.
- C.3.10 The policy item was a consideration of articling placement issues. Alan Treleaven provided an update on the 1994-95 articling placement numbers. An up-to-date report on the placement situation will be distributed at Convocation.
- C.3.11 The next meeting of the Subcommittee is scheduled at 8:00 a.m. on October 28, 1994, immediately preceding Convocation.
- C.4 ARTICLING STUDENT MATCHING PROGRAM: 1995-96 REPORT
- C.4.1 The 1995-1996 Articling Student Matching Program took place in August 1994. This program arranges articles for approximately 75 percent of students who will article in Toronto. It operates concurrently with non-match recruitment in Metropolitan Toronto. Firms determine how they will recruit students (within the Matching Program or outside) and recruitment for both groups takes place concurrently.
- C.4.2 Articling recruitment outside Metropolitan Toronto may take place anytime after the student has completed the second year of law school. Therefore, students securing articles outside Metropolitan Toronto (as well as those applying to non-match firms) do not participate in the Matching Program. For this reason, match results must be reviewed and interpreted carefully (e.g., a fall off in positions in the Match may not indicate a fall off in positions overall, but merely a move to non-match recruitment.)
- C.4.3 Sixty-eight firms participated in the 1994 Match, offering 452 articling positions. 98 percent of available positions were filled within the Match. Of the 637 students who participated in the Match, 446 (70 percent) were matched for articles in 1995-1996. 191 students were unmatched. The unmatched students will continue to look for articles over the coming year.
- C.4.4 Table "A:" (page 2) depicts the Match results over the past seven years. Tables "B" and "C" (pages 3 - 4) set out the results of the 1994 Match for firms and for students.

- C.4.5 The Articling Student Matching Program continues to offer an important approach to the offer and acceptance component of articling recruitment. In conjunction with the Procedures Governing the Recruitment of Articling Students (which regulate recruitment generally), the Matching Program has contributed to an improved recruitment process.
- C.4.6 In November, the Legal Education Committee will be asked to approve the Procedures that will govern articling and summer student recruitment in 1995. A matching program for articling recruitment will be included in the recommendation to Committee.
- C.5 BAR ADMISSION COURSE REVIEW
- C.5.1 The Bar Admission Course Subcommittee is continuing its review of the current Bar Admission Course and preparing a final report to Convocation proposing changes to the Bar Admission Course intended to enhance the program and to focus on budgetary concerns. Important work remains to be done. The members of the Subcommittee are Mr. Epstein (Chair), Mr. Brennan, Dean Carter, Mr. Goudge, Mr. Lamont, Ms. Lax, Mrs. Legge, Dean Pilkington (new Subcommittee member), Mr. Prabhu, Mr. Rosenberg and Mr. Mark Austen (a graduate of the 1993 Bar Admission Course). Mr. Treleaven and Ms. Abner, of the Bar Admission Course Faculty, participate in the meetings of the Subcommittee.
- C.5.2 Focus group meetings have been conducted recently with graduates of the 1993 Bar Admission Course, and a report from the focus group meetings is being presented to the Bar Admission Course Subcommittee for its next meeting. The Canadian Bar Association-Ontario Academic Legal Education Committee has also been studying the Bar Admission Course, while consulting with Mr. Treleaven, and intends to provide its own preliminary recommendations to the Subcommittee.
- C.5.3 The Subcommittee has reviewed a significant amount of printed material relating to legal education not only in Ontario but in 45 other jurisdictions. A list of those materials is attached. (page 5) (Benchers who wish to receive a copy of any of those materials should contact Mr. Treleaven.)
- C.5.4 Mr. Treleaven has prepared an interim draft document entitled "Draft Bar Admission Course Review Interim Progress Report", which includes Mr. Treleaven's brief summary of the major issues that have been canvassed to date. The interim draft has been in the hands of the Bar Admission Course Subcommittee for review. Once in final form, the interim report will be distributed to Convocation as an information item, following which the Bar Admission Course Subcommittee will carry on with its work.
- C.6 JOINT COMMITTEE ON ACCREDITATION
- C.6.1 All persons wishing to be admitted to the practice of law in Ontario must do so by one of the following means:
- a) Obtain a Canadian LL.B. degree and complete the Bar Admission Course successfully,
 - b) If qualified to practise law in another country, obtain a Certificate of Qualification from the Joint Committee on Accreditation ("J.C.A.") and then complete the Bar Admission Course successfully,

27th October, 1994

- c) After having practised law for the required period of time in another Canadian jurisdiction, successfully write the Ontario transfer examinations (with some special restrictive provisions relating to some Alberta and Quebec lawyers), or
- d) As an Ontario law school Dean or full-time member of faculty meet the academic call requirements.
- C.6.2 Persons who proceed by the Certificate of Qualification route must apply to the J.C.A., which evaluates the legal training and professional experience of persons with foreign or Quebec non-common law legal credentials. The J.C.A., after evaluating the legal training and professional experience, requires persons either to attend at a Canadian common law faculty to complete a specified number of courses or to write specified J.C.A. administered challenge examinations.
- C.6.3 The role and process of the J.C.A. are being reviewed by the Legal Education Committee.
- C.6.4 Vern Krishna, the Executive Director of the J.C.A., is co-ordinating a discussion of J.C.A. related issues for the Legal Education Committee, a discussion that is ongoing.
- C.7 CONTINUING LEGAL EDUCATION REPORT
- C.7.1 The Continuing Legal Education Report, prepared by the Director of Continuing Legal Education, Brenda Duncan, is attached. (pages 6 - 7)

ALL OF WHICH is respectfully submitted

DATED this 28th day of October, 1994

P. Epstein,
Chair

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

- Item C.-C.3.8 - Copy of the Notice to the Profession re: Articling and Joint Committee Students. (page 1)
- Item C.-C.4.4 - Table "A": Match Results 1988 to present. (page 2)
- Item C.-C.4.4 - Table "B" & "C": 1994 Match Results for firms and students. (pages 3 - 4)
- Item C.-C.5.3 - Materials studied by the Bar Admission Course Subcommittee. (page 5)
- Item C.-C.7.1 - Continuing Legal Education Report prepared by the Director of Continuing Legal Education, Brenda Duncan. (pages 6 -7)

The following material was also distributed to the Benchers:

- The Bar Admission Course Review Interim Progress Report (Bar Admission Course Subcommittee, October 20, 1994)

27th October, 1994

- Articling Student Placement 1994-1995 Articling Term as at October 26, 1994

THE REPORT WAS ADOPTED

LEGISLATION AND RULES COMMITTEE

Meeting of October 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of October, 1994, at 11:30 a.m., the following members being present: J. Wardlaw (acting Chair), S. Lerner

Also present: A. Brockett, E. Spears.

* The recommendations contained in this report were approved by the Committee by telephone following the October 13, 1994 meeting.

A.
POLICY

No items to report.

B.
ADMINISTRATION

B.1. REGULATION 708 MADE UNDER THE LAW SOCIETY ACT: SECTION 9: AMENDMENT TO PROVIDE FOR A SINGLE BENCHER DISCIPLINE HEARING PANEL

B.1.1. Recommendation

B.1.1.1. That, subject to Convocation adopting the recommendation of the Discipline Committee (Policy Section) that section 9 of Regulation 708 be amended as specified in the report of that Committee, section 9 of Regulation 708 be amended as indicated below.

B.1.1.2. That section 9 of Regulation 708 made under the Law Society Act be amended by adding thereto the following new subsection (3.1):

"(3.1) A quorum of the Committee is one member of the Committee who is not a bencher by virtue of his or her office,

(a) where the only particulars of the complaint to be heard by the Committee involve allegations of one or more of the following instances of misconduct by the member,

- (i) practice as a barrister or solicitor while the member's rights and privileges were suspended,
- (ii) breach of an undertaking to the Society,
- (iii) failure to honour financial obligations to the Society,
- (iv) failure to file a certificate or report required by section 16,
- (v) failure to maintain an investment authority or a report on investment as required by section 15.2,
- (vi) failure to respond to inquiries from the Society,
- (vii) failure to co-operate with auditors or investigators acting for the Society,
- (viii) failure to pay costs that Convocation or a committee of Convocation has ordered be paid; or

(b) where, before the hearing commences, the member whose conduct is being investigated and counsel for the Society consent to a hearing before a single bencher."

B.1.1.3. That subsection 9(3) of Regulation 708 made under the *Law Society Act* be amended by adding, after the word "subsections", the subsection number (3.1), and a comma, so that subsection 9(3) will read"

"Subject to subsections (3.1), (4) and (5), a quorum of the committee is three members of the Committee who are not benchers by virtue of their office."

(Amended text underlined).

B.1.1.4. That subsection 9(5) of Regulation 708 made under the *Law Society Act* be amended by adding, before the first word "If", the words "Except in the case of a hearing before a single bencher", and a comma, so that subsection 9(5) will read:

"Except in the case of a hearing before a single bencher, if a member of the Committee, after beginning the hearing of a complaint, is unable to continue because he or she has been appointed to the judiciary, has ceased to be a bencher, has become permanently physically or mentally disabled, suffers from a long-term illness or has died, the quorum of the Committee for the purpose of completing the hearing of the complaint and reporting to Convocation is two members of the Committee who are not benchers by virtue of their office."

(Amended text underlined)

B.1.1.5. That Convocation request the Attorney General to arrange for a similar amendment to be made to the French text of Regulation 708.

B.1.2. Explanation

- B.1.2.1. On September 23, 1994, Convocation adopted a recommendation from the Discipline Committee (Policy Section) that an appropriate legislative or regulatory amendment be sought, on an expedited basis, to permit a single benchner to hear complaints in relation to administrative offences.
- B.1.2.2. It is unlikely that the Law Society would be able to obtain amendment of the *Law Society Act* in the near future. It has therefore been agreed that the Law Society should seek an amendment to the Regulation to implement the recommendation of the Discipline Committee (Policy Section).
- B.1.2.3. At present, section 9 of Regulation 708 made under the *Law Society Act* provides that a complaint shall be heard before a hearing panel comprising at least three benchers. In certain circumstances, section 9 permits a complaint to be heard by a hearing panel comprising only two benchers. Subsections (3) and (5) of section 9 currently read:

9.

* * * *

(3) Subject to subsections (4) and (5), a quorum of the Committee is three members of the Committee who are not benchers by virtue of their office.

* * * *

(5) If a member of the Committee, after beginning the hearing of a complaint, is unable to continue because he or she has been appointed to the judiciary, has ceased to be a bencher, has become permanently physically or mentally disabled, suffers from a long-term illness or has died, the quorum of the Committee for the purpose of completing the hearing of the complaint and reporting to Convocation is two members of the Committee who are not benchers by virtue of their office.

B.1.2.4. At its meeting on October 13, the Discipline Committee (Policy Section) approved (in principle) amendments to section 9 of Regulation 708 to permit a quorum of the Committee to be one bencher in the following instances:

1. Where the complaint against a member is of an administrative nature.
2. Where the member and counsel for the Society consent to a hearing before a single bencher.

Attached to this report as Attachment A is a document outlining the proposed amendments to section 9 of Regulation 708 approved by the Discipline Committee (Policy Section).

B.1.2.5. To expedite the process of amending the Regulation, the Legislation and Rules Committee was asked to consider proposed amendments to section 9 of Regulation 708 before the regular meeting of Convocation on October 27, 1994.

B.2. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: RULES 34 AND 36: TRANSFER OF MATTERS FROM THE FINANCE AND ADMINISTRATION COMMITTEE TO THE ADMISSIONS AND MEMBERSHIP COMMITTEE

B.2.1. Recommendations

B.2.1.1. That subrule 34(1) of the Rules made under subsection 62(1) of the *Law Society Act* be amended as follows:

1. In clause (c), before the word "recommendations", the words "the making of" to be added, and, after the semi-colon, the word "and" to be added.
2. In clause (d), after the word "Society", a comma and the words "and the making of recommendations with respect to the suspension of the rights and privileges of members for failure to pay fees or levies" to be added.

As amended, subrule 34(1) will read:

"The Finance and Administration Committee is responsible to Convocation for the management of the Society's financial affairs, including,

- (a) the collection, management, investment and disbursement of the Society's funds;
- (b) the management of the lands and buildings of the Society or for which the Society is responsible;
- (c) the making of recommendations with respect to staff appointments and salaries; and
- (d) the enforcement of the rules relating to the payment of fees and levies to the Society, and the making of recommendations with respect to the suspension of the rights and privileges of members for failure to pay fees or levies,

and the Committee may make such arrangements and take such steps as it considers advisable to carry out its responsibilities.

(Amended text underlined)

B.2.1.2. That subrule 34(1.1) of the Rules made under subsection 62(1) of the *Law Society Act* be revoked.

B.2.1.3. That subrule 36(2) of the Rules made under subsection 62(1) of the *Law Society Act* be amended by as follows:

1. In clause (e), the word "and" to be deleted.
2. In clause (f), after the word "abeyance", a comma and the words "and the restoration of the memberships of persons whose memberships are in abeyance" to be added, and the period at the end to be deleted and replaced by a semi-colon.
3. The following new clauses to be added:
 - "(g) applications under Rule 50 by retired and incapacitated members for exemption from payment of annual fees;
 - (h) applications under Rule 50 by retired and incapacitated former members for restoration of membership and exemption from payment of fees; and

- (i) applications of members for resignation from the Society."

As amended, subrule 36(2) will read:

"Unless otherwise expressly provided in these rules, the Admissions and Membership Committee is responsible to Convocation for all matters pertaining to membership, including,

- (a) life memberships;
- (b) changes of names;
- (c) restoration of the rights and privileges of members whose rights and privileges have been suspended;
- (d) changes to rolls and records;
- (e) deaths;
- (f) memberships in abeyance, and the restoration of the memberships of persons whose memberships are in abeyance;
- (g) applications under Rule 50 by retired and incapacitated members for exemption from payment of annual fees;
- (h) applications under Rule 50 by retired and incapacitated former members for restoration of membership and exemption from payment of fees; and
- (i) applications by members for permission to resign.

(Amended text underlined)

- B.2.1.4. That the French Language Services Committee be asked to arrange for a French translation of the amended Rules 34 and 36.

B.2.2. Explanation

- B.2.2.1. At present, subrules 34(1) and (1.1) of the Rules made under subsection 62(1) of the *Law Society Act*, which outline some of the responsibilities of the Finance and Administration Committee, read:

34. (1) The Finance and Administration Committee is responsible to Convocation for the management of the Society's financial affairs, including,

- (a) the collection, management, investment and disbursement of the Society's funds;
- (b) the management of the lands and buildings of the Society or for which the Society is responsible;
- (c) recommendations with respect to staff appointments and salaries;
- (d) the enforcement of the rules relating to the payment of fees and levies to the Society,

and the Committee may make such arrangements and take such steps as it considers advisable to carry out its responsibilities.

(1.1) The Finance and Administration Committee is responsible to Convocation for the following matters pertaining to membership:

- (a) applications under Rule 50 by retired and incapacitated members for exemption from payment of annual fees;
- (b) applications under Rule 50 by retired and incapacitated former members for restoration of membership and exemption from payment of fees;
- (c) the restoration of the memberships of persons whose memberships are in abeyance;
- (d) suspension of the rights and privileges of members for failure to pay fees or levies; and
- (e) considering and reporting upon applications of members for resignation from the Society.

B.2.2.2. Subrule 36(2) of the Rules made under subsection 62(1) of the *Law Society Act*, which outlines some of the responsibilities of the Admissions and Membership Committee, presently reads:

Unless otherwise expressly provided in these rules, the Admissions and Membership Committee is responsible to Convocation for all matters pertaining to membership, including,

- (a) life memberships;
- (b) changes of names;
- (c) restoration of the rights and privileges of members whose rights and privileges have been suspended;
- (d) changes to rolls and records;
- (e) deaths ;and
- (f) memberships in abeyance.

B.2.2.3. On May 27, 1994, Convocation received the report of the Special Committee on Priorities and Planning, which contained numerous recommendations relating to the priorities and planning process and the role of the Finance and Administration Committee. One recommendation read:

That all matters dealing with membership should be transferred from the Finance and Administration Committee to the agenda of the Admissions and Membership Committee. The only matters respecting membership which would remain on the Finance and Administration Committee would be a report from the Admissions and Membership Committee recommending those members whose rights and privileges would be suspended for non-payment of fees and levies.

B.2.2.4. The recommendation was considered by the Finance and Administration Committee, and on September 23, 1994, Convocation adopted a recommendation from that Committee that the following matters be dealt with and reported to Convocation by the Admissions and Membership Committee:

1. Applications under Rule 50 by retired and incapacitated members for exemption from payment of annual fees.
2. Applications under Rule 50 by retired and incapacitated members for restoration of membership and exemption from payment of fees.
3. Applications of members for resignation from the Society.

- B.2.2.5. Although subrule 34(1.1) delegates to the Finance and Administration Committee responsibility for the restoration of the memberships of persons whose memberships are in abeyance, in practice, this responsibility has been assumed by the Admissions and Membership Committee. The practice is consistent with the May 1994 recommendation of the Special Committee on Priorities and Planning. It has been suggested that the Rules be amended so that they reflect actual practice.

B.3. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: FORMS 2 AND 3: AMENDMENTS

B.3.1. Recommendations

- B.3.1.1. That the introductory paragraph of Form 2, made under subsection 62(1) of the *Law Society Act*, which currently reads:

"I ..., a member of The Law Society of Upper Canada, do certify that during the 12-month period preceding this certificate or since last filing with the Society under section 16 of Regulation 708 of the Revised Regulations of Ontario, 1990 made pursuant to the *Law Society Act*:"

be amended to read:

"I ...,
Member # ... (as printed above your name on the enclosed Qualification Status form),
a member of The Law Society of Upper Canada, do certify that during the 12-month period preceding this certificate or since last filing with the Society under section 16 of Regulation 708 of the Revised Regulations of Ontario, 1990 made pursuant to the *Law Society Act*:"

(Amended text underlined)

- B.3.1.2. That the address printed on page 2 of Form 2, made under subsection 62(1) of the *Law Society Act*, which currently reads:

"The Audit Department, The Law Society of Upper Canada, Osgoode Hall,
130 Queen Street West, 6th Floor, Toronto, Canada M5H 2N6"

be amended to read:

"Annual Filings - Membership Records
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto ON M5H 2N6"

(Amended text underlined)

- B.3.1.3. That the address printed on page 1 of Form 3, made under subsection 62(1) of the *Law Society Act*, which currently reads:

27th October, 1994

"The Audit Department
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Canada M5H 2N6"

be amended to read:

"Annual Filings - Membership Records
The Law Society of Upper Canada
Osgoode Hall
130 Queen St. W.
Toronto, ON M5H 2N6"

(Amended text underlined)

B.3.1.4. That in section 1 on page 1 of Form 3, made under subsection 62(1) of the *Law Society Act*, clauses (b) and (c), which currently read:

- "(b) a partner of a firm practising under the name and style of ...
- (c) an associate (see note 2 below) of a sole practitioner or of a firm, as the case may be, practising under the name and style of ..."

be reversed in order, so that clauses (b) and (c) of section 1 on page 1 of the amended Form 3 will read:

- "(b) an associate (see note 2 below) of a sole practitioner or of a firm, as the case may be, practising under the name and style of ...
- (c) a partner of a firm practising under the name and style of ..."

B.3.1.5. That the French Language Services Committee be asked to arrange for a French translation of the amended Forms 2 and 3.

B.3.2. Explanation

B.3.2.1. Since Forms 2 and 3 were last printed (in September 1993) for distribution to the membership, changes have been made to the administrative procedure whereby completed Forms 2 and 3 are processed (e.g., the named department which receives the Forms). It has been proposed that this procedure be reflected in the Forms. (Copies of Forms 2 and 3, with the proposed amendments shaded, are attached to this report as Attachment B.)

27th October, 1994

C.
INFORMATION

No items to report.

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

M. Cullity,
Chair

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

- Item B.-B.1.2.4. - Document outlining proposed amendments to section 9 of Regulation 708. (A - A-3)
- Item B.-B.3.2.1. - Copies of Forms 2 and 3 with proposed amendments. (B - B-5)

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE (public Report)

Meeting of October 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of October, 1994, at 8:00 a.m., the following members being present:

Susan Elliott (Chair), R. Topp (Vice-Chair), T. Bastedo, I. Blue, G. Farquharson and M. Hennessy. G. Howell also attended.

A.
POLICY

1. Publishers' Law Suit on the Great Library's Copy/Fax Service

The Chair reported on the meeting held with the publishers on September 30th. In attendance at the meeting were (for the Law Society) Susan Elliott, Glen Howell and Fraser Mann (counsel); and (for the publishers) Gary Rodrigues (Carswell) and GERALYN Christmas (Canada Law Book).

The meeting was perceived to be a positive step in understanding the positions of the two parties to the lawsuit, and there are matters on which the publishers need to consult amongst themselves and then communicate further with the Law Society. A follow-up meeting will be held and the Chair will report further to the Committee and Convocation as soon as possible.

B.
ADMINISTRATION

1. County Libraries - County Library Review Subcommittee - Draft Interim Report - Report to be Considered by County & District Law Presidents' Association

The Committee was briefed by Messrs. Topp and Blue on the Draft Interim Report of the County Library Review Subcommittee. The Draft Interim Report will be the main item on the agenda for the CDLPA Library Committee which meets Friday October 14th, and then again will be considered at the CDLPA plenary session of the 47 County Presidents in November. The timetable for the Final Report of the Subcommittee calls for the Report to be considered by the full Committee at its meeting on January 12th 1995.

C.
INFORMATION

1. Great Library - Technology - Demonstration of CD-Rom Products - Joint meeting with Research & Planning Committee

The Great Library's Reference branch conducted a demonstration of CD-Rom products for members of both the Libraries & Reporting Committee and the Research & Planning Committee. The demonstration took place in the Search-Law premises.

The demonstration was arranged as a joint meeting of the two committees because both are in the process of addressing technology issues. The Libraries & Reporting Committee will be reporting to Convocation in the new year on the topic of the Ontario Reports (and possibly other Law Society materials) on CD-Rom (compact disc).

The Benchers witnessed three products "in action" - a law report CD-Rom from West Publishing; a statutes services from Canada Law Book (using "Folio" software); and a legal periodical index from a U.S. company - an index that covers Canadian authors.

The demonstration was a lively session, in a packed room, with many questions asked. Those in attendance were:

Susan Elliott (Chair, Libraries & Reporting Committee)
Lloyd Brennan (Chair, Research & Planning Committee)

Tom Bastedo
Ian Blue
Fran J. Carnerie
Abraham Feinstein
Michael Hennessy
The Hon. Allan Lawrence
K. Julaine Palmer
Marc Somerville

27th October, 1994

Theresa Roth)
Jeanette Bosschart) demonstrators -- with thanks
Angela Heale)

Richard Tinsley
Glen Howell
Andrew Brockett
Elliot Spears

ALL OF WHICH is respectfully submitted

Dated this 28th day of October, 1994

S. Elliott,
Chair

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

Meeting of October 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of October, at 3:00 p.m., the following members being present: C. McKinnon (Chair), R. Cass, N. Graham, L. Legge, H. Warder Abicht.

Also Present: J. Adamowicz, N. Amico, H. Gross, S. Kerr, S. McCaffrey,
P. Rogerson.

B.
ADMINISTRATION

B.1. FILE CLOSURES - PRACTICE REVIEW PROGRAMME

- B.1.1. One Practice Review file was closed based on the fact that the solicitor's participation in the Programme is not required. A reviewer and staff attended at his office and on each occasion it was found that only minor improvements could be made to the practice. The Committee concluded that the member's participation is not warranted.
- B.1.2. Two files were closed based on the fact that the members are no longer practising law. The files have been closed but staff will monitor the files twice yearly in the event that the members return to practice, at which time the files can be re-opened, if appropriate to do so.

- B.1.3. In one instance the member had not yet agreed to participate in the Programme, but in May, 1993, was suspended from practice for nonpayment of annual fees. The solicitor has been advised by the Complaints department that in other circumstances, his file would proceed into the disciplinary process; however, in light of the fact that the solicitor is suspended from practice and is not practising, the Complaints department will not proceed further with the matter at this point in time.
- B.1.4. In the second instance, the member signed an undertaking to participate in the Programme. A review was conducted and staff attended at the member's office. Several letters were sent to the member requesting a response to the staff report prepared after the attendance. No response was received from the member. He was subsequently suspended for nonpayment of fees and his whereabouts are unknown. The Staff Trustee is attending to this matter.
- B.1.5. One Practice Review file was closed because the member faces serious discipline allegations. The member was participating in the Practice Review Programme; both a reviewer and staff had attended at his office on separate occasions. The allegations against the solicitor include misapplication of client funds, acting in conflict of interest, and borrowing money from his client. The member's Practice Review file has been in abeyance since September, 1993 because of the audit investigation. Staff of the Professional Standards Department will monitor the Audit file and if it is appropriate to do so, the member's file will be re-opened.
- B.1.6. One file was closed by the Committee based on the member's unwillingness to participate in the Programme. The solicitor wrote requesting information on several matters prior to making a decision whether to participate. All of the requested information was provided to the solicitor. No response has been received from him as to his willingness to participate. The file will be referred to the staff working group to determine whether further investigation of the member is required, or whether an authorization memorandum should be prepared for submission to the Chair and Vice Chairs of the Discipline Policy Committee.

C.
INFORMATION

C.1. REFERRALS TO THE PRACTICE REVIEW PROGRAMME

- C.1.1. In 1986, the Special Committee on Competence recommended the creation of what has become the Practice Review Programme. As part of its recommendations, the Special Committee endorsed a system of referrals, whereby various departments of the Law Society would identify members who could be considered appropriate candidates for the Programme.
- C.1.2. Referrals are now made to the Programme by the Complaints, Audit and Discipline Departments; by LPIC; by Complaints Review Commissioners; through the Specialist Certification and Articling Principal processes; and through miscellaneous other sources, both internal and external, such as the Lawyer Referral Service and county or district law associations.

- C.1.3. One single complaint can lead to referral to the Programme. There is, however, no "threshold" test whereby departments of the Law Society automatically consider whether the member in question should be referred to the Programme; most referrals occur on an *ad hoc* basis. The lack of any threshold test means that the current random referral process continues. There is an element of unfairness in this randomness, and also a haphazard identification of potential candidates: members whose practices, and clients, might benefit from the Programme are not necessarily referred to the Programme.
- C.1.4. At present, there are 138 members participating in the Programme; 7 files are in abeyance because of serious disciplinary action pending or proceeding, or because the member temporarily is not practising. This caseload is at the optimum for the department, with its current staffing. If a threshold test were established, it is quite possible that the volume of referrals to the Programme would increase, either straining resources beyond their effectiveness, or requiring an addition to those resources.
- C.1.5. Your Committee has therefore directed that the staff committee, composed of representatives from the Professional Standards, Complaints, Audit and Discipline departments, and LPIC, report to the Committee on the following issues:
1. Can the staff committee identify an appropriate threshold level for referrals to the Practice Review Programme from each department and, if so, on what basis?
 2. Would an increase in referrals occur, if a threshold were established? If so, what is the anticipated increase?
 3. Does the referring department have the resources necessary to permit assessment of members as potential candidates once any threshold has been established?
 4. Does the staff committee have any additional recommendations regarding the identification of potential candidates?
- C.1.6. The staff committee has been directed to consult with the Lay Benchers regarding their referrals to the Practice Review Programme, and to include information gathered through this consultation in the report to the Committee.
- C.1.7. The report to the Committee will provide an assessment of the impact on the resources of the Professional Standards Department, if increased referrals seem likely as a result of establishing a threshold.
- C.2. CRIMINAL DEFENCE CHECKLIST SUB-COMMITTEE
- C.2.1. Bruce Durno has agreed to act as Chair of the Sub-committee, membership in which is composed of Robert Carter, Q.C., Fletcher Dawson, Michelle Fuerst, Berk Keaney, Michael Neville, Terry O'Hara, Marc Rosenberg and George Walker, Q.C. The Sub-committee has decided upon the basic framework of the checklist, a table of contents, and is in the process of assigning responsibility for the preparation of the different sections.

C.3. POLICY ISSUES DECIDED TO DATE

- C.3.1. The Committee was provided with a summary of the policy issues considered by the Committee and adopted by Convocation to date.

C.4. PRACTICE ADVISORY SERVICE - STATUS REPORT

- C.4.1. There were 670 calls received by the service during July, and 697 in August. Dana Dymont is now a member of the Practice Advisory Service working on a flexible part-time basis. She has been hired to cover vacation periods of other staff lawyers and at peak periods such as end of the month. She was called to the Bar in 1983. She practised for three and a half years with a firm in King Township, then opened her own practice in Newmarket. She has practised in the areas of real estate, wills, estates and corporate law. Ms. Dymont will be working for 26 weeks in total during the next 52.

C.5. PROFESSIONAL STANDARDS - DEPARTMENTAL REPORT

- C.5.1. Effective October 11, 1994, Hershel Gross has joined the Professional Standards Department as a staff lawyer. Called to the Bar in 1978, Mr. Gross has been a sole practitioner in Toronto, operating a general litigation practice with an emphasis on commercial, matrimonial, family and personal injury litigation. He has taught in the Bar Admission Course and also acted as a reviewer for the Practice Review Programme; and he has taken a series of courses and workshops in adult education. Mr. Gross is expected to be a valuable addition to the Department.
- C.5.2. In September, 6 lawyers were authorized to participate in the Programme, and 2 other members were re-authorized, who had declined to participate in the past, but continue to experience issues that suggest their practices could benefit from the Programme. Fourteen files were closed, 6 on the basis of successful completion of the Programme. A review panel was held in September, where 4 lawyers met with Benchers Laura Legge, Q.C. and Ron Cass, Q.C., for the benefit of their experiences in and perspectives on the practice of law.
- C.5.3. Staff attended the CBAO "Operation Update" program, which provides an overview of the year's developments across a spectrum of areas of law. The program and the accompanying materials are valuable in assisting all lawyers in the department to remain current in the law.

ALL OF WHICH is respectfully submitted

DATED this 28th day of October, 1994

C. McKinnon
Chair

THE REPORT WAS ADOPTED

27th October, 1994

SEPTEMBER DRAFT MINUTES - September 22 and 23, 1994

(see Draft Minutes in Convocation file)
THE DRAFT MINUTES WERE ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of October 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met jointly with the Equity in Legal Education and Practice Committee on Thursday, the 13th of October 1994, at 8:00 a.m., the following members of the Committee being present: P. Copeland (Chair), N. Angeles-Richardson, S. O'Connor, P. Hennesey and B. Luke.

Also present: D. Crosbie, A. Singer, L. Talbot, G. Zecchini

Your Committee also met separately at 9:30 a.m., the following members being present: P. Copeland (Chair), N. Angeles-Richardson, S. O'Connor, P. Hennesey and B. Luke.

Also present: E. Spears, L. Talbot

A.
POLICY

No matters to report.

B.
ADMINISTRATION

No matters to report.

C
INFORMATION

C.1 POSSIBLE MERGER WITH EQUITY COMMITTEE

C.1.1. The two Committees met to discuss informally the possibility of merging. No member of either Committee made a motion formally requesting a merger. Since the Women in the Legal Profession Committee had not met separately to discuss the proposal, the matter was referred to your Committee for more detailed consideration.

- C.1.2. When your Committee met separately at 9:30 a.m., the matter of merger was discussed. It was decided that the Women in the Legal Profession Committee would not recommend to the Equity in Legal Education and Practice Committee a merger of the two Committees.

C.2. POSSIBLE INCLUSION OF REPRESENTATIVES ON THE COMMITTEE

- C.2.1. Your Committee discussed the possibility of inviting various representatives of women's groups to participate in the deliberations of your Committee as is done with the Equity in Legal Education and Practice Committee.

C.3. PRELIMINARY DISCUSSION OF FUTURE POSSIBLE POLICY PRIORITIES

- C.3.1. Your Committee considered, in a very preliminary fashion, the possibility of studying the following issues in the coming year:
- C.3.1.1. The effects of differential Legal Aid Tariff Rates for lawyers practising in the areas of criminal and family law and the particular effect such rates have on the practices of female lawyers.
- C.3.1.2. The impact of insurance levies on female lawyers and how information particular to women in practice may be best communicated to the Insurance Committee in its ongoing deliberations, thereby ensuring that the needs of women lawyers have been fully canvassed and considered.
- C.3.1.3. The establishment of a mentor program for female practitioners in small firms.
- C.3.1.4. The development of maternity and parental leave programs, that is, the development of model policies in this area.
- C.3.1.5. The development of programs for members returning from leave. In the opinion of the Committee this subject goes hand in hand with the development of model policies for parental and other leave.
- C.3.1.6. The possible recommendation that Convocation adopt a statement of values as outlined in Recommendation 12.1 of the Wilson Task Force Report which states: "The Task Force recommends that law societies propound a statement that the legal profession is enormously enriched by, and values deeply, the full participation of men and women in our profession regardless of age, disability, race, religion, marital or family status, or sexual orientation."
- C.3.1.7. The development of internal employment policies which make the Law Society a model employer with respect to maternity and other gender-related work policies.

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- C.3.1.8. Consideration of ways to implement the recommendations of the Canadian Bar Association Task Force Report (*Touchstones for Change: Equality, Diversity and Accountability*) by way of Joint Committees with other Committees of Convocation.

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

P. Copeland,
Chair

THE REPORT WAS ADOPTED

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

RESEARCH AND PLANNING COMMITTEE

Meeting of October 13, 1994

Ms. Sealy presented Item A.-A.1. re: Statement on the Role of the Law Society for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of October, 1994, at 8:00 a.m., the following members being present: L. Brennan (Chair), F. Carnerie, A. Feinstein, The Hon. A. Lawrence, J. Palmer, H. Sealy, M. Somerville.

Also present: A. Brockett, E. Spears, R. Tinsley.

A.
POLICY

A.1. STATEMENT ON THE ROLE OF THE LAW SOCIETY

A.1.1. Your Committee adopted a revised report from its Subcommittee on the Role of the Law Society, incorporating minor changes to the Commentary originally adopted by the Committee in June 1994.

A.1.2. The proposed Role Statement, the Commentary and the Report of the Subcommittee are at Attachment A.

A.1.3. Your Committee recommends that Convocation,

A.1.3.1. adopt the Role Statement and Commentary;

- A.1.3.2. direct the Priorities and Planning Committee or its successor committee to employ the Role Statement, the Commentary and the Report of the Subcommittee as a guide in preparing budgetary and program recommendations in future fiscal years;
- A.1.3.3. direct all committees to review their current and proposed activities, programs and proposals in light of the Role Statement, the Commentary and the Report of the Subcommittee;
- A.1.3.4. direct all committees and departments to include the Role Statement prominently in,
 - (i) all major policy documents, and
 - (ii) all materials designed to provide information to the public about the Law Society;
- A.1.3.5. direct that the Commentary be part of the material that is made available whenever a copy of the Role Statement is requested by a member of the profession or the public.

B.
ADMINISTRATION

Nothing to report.

C.
INFORMATION

- C.1. POSSIBLE CONFERENCE WITH OTHER ORGANIZATIONS IN THE PROFESSION
- C.1.1. Your Committee considered a suggestion that, once the Statement on the Role of the Law Society has been adopted by Convocation, a conference should be arranged at which the Society would discuss with other organizations in the profession (for example the Canadian Bar Association-Ontario, the County and District Law Presidents' Association, the Advocates' Society) their respective roles.
- C.1.2. The view was expressed that it might be premature to hold such a conference until the Law Society had completed its own strategic planning exercise, reviewing its programs and activities in light of the Role Statement (see item C.2 below).
- C.1.3. The view was also expressed that the Law Society might not be the appropriate body to convene a conference which would be concerned with allocating responsibility for activities which the Law Society had defined as being outside its own role.
- C.1.4. It was agreed to explore the possibility of establishing a liaison committee (on which the major organizations in the profession would be represented) to discuss respective roles. If a conference is to be arranged, it may be more appropriate for such a liaison committee to take the initiative for suggesting and organizing it.

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C.2. STRATEGIC PLANNING EXERCISE

- C.2.1. Your Committee is of the view that, when the Role Statement has been officially adopted, Convocation should undertake a strategic planning exercise, evaluating all programs and activities of the Society and establishing priorities for the organization as a whole.
- C.2.2. It has been suggested that a benchers' conference early in the next quadrennial term, might be an appropriate culmination of such an exercise.
- C.2.3. It has further been suggested that the co-ordination of a strategic planning exercise may be more appropriately undertaken by the Priorities and Planning Committee of Convocation than by the Research and Planning Committee.
- C.2.4. Your Committee will consider this matter further and report to Convocation. It considers it important, however, to make the point that the adoption of the Role Statement should not lead only to a retrenchment of activities. A Role Statement provides an opportunity for creative planning and the introduction of new programs designed to fulfil the Society's role.

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

L. Brennan,
Chair

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

Item A.-A.1.2. - Proposed Role Statement, the Commentary and Report of the Subcommittee. (Attachment A)

The following corrections were made to the Statement:

Under the heading - High Standards of learning, competence and professional conduct (page 6)

Section 50. - (1) (a) - that the words "himself" and "herself" be replaced with the word "themselves" so that the paragraph would then read -

no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold themselves out as or represent themselves to be a barrister or solicitor or practise as a barrister or solicitor...

Footnote 18 (page 11)

Footnote 18 should read "Law Society Act, s. 27(2)", not s. 27(4).

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It was moved by Ms. Sealy, seconded by Mr. Feinstein that the Role Statement be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

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

PROFESSIONAL CONDUCT COMMITTEE

Meeting of October 13, 1994

The Notice of Motion made by Ms. Curtis in September was presented to Convocation.

Mr. Cullity spoke to Item A.-1. of the Professional Conduct Report re: Motion to delete paragraph 7(d).

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of October, 1994 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Kiteley (Vice-Chair), Blue, Carey and Moliner. The following staff were present: M. Devlin, D. Godden and H. Werry.

A.
POLICY

1. MOTION BEFORE CONVOCAATION TO DELETE
PARAGRAPH 7(D) OF RULE 12 OF THE RULES OF PROFESSIONAL CONDUCT

After Convocation in September accepted the Professional Conduct Committee's recommendation that the Oakville law firm of O'Connor, MacLeod be asked to remove the name of its former partner, Mr. O'Connor, who had been appointed to the bench, a motion was made that paragraph 7(d) of the Rules of Professional Conduct be deleted.

Paragraph 7(d) reads as follows:

When a lawyer retires from a firm to take up an appointment as a judge or master, or to fill any office incompatible with the practice of law, the lawyer's name shall be deleted from the firm name.

This motion will be debated at October's Convocation. The Committee adopted its earlier recommendation to Convocation that it is in the public interest that a judge's name should be removed from the firm name as is provided for in Rule 12.

The reason behind this provision is that the public could associate the judge's name with the firm name and conclude that there was a marked advantage to be gained by employing this law firm in litigious matters because his brother and her sister judges would know of that judge's former association with that firm. Although no benefit would be accorded a litigant in these circumstances, there is still that perception which would harm the administration of justice.

The ABA Model Code at Rule 7.5, subsection (c) reads:

The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communication on its behalf, during any substantial period in which the lawyer is not actively and regularly practising with the firm.

A paper prepared by Mr. Cullity (Appendix A) is attached for discussion purposes.

The Committee recommends to Convocation that there be no change to Rule 12, paragraph 7(d).

Note: Motion, see page 437

2. REQUEST FOR ADVICE - LAWYER ENDORSING
VOICE ACTIVATED COMPUTER DICTATION
SYSTEM FOR USE IN LAW FIRMS

A law firm has asked the Professional Conduct Committee to comment on the participation of a lawyer in a scheme whereby he would recommend lawyers use a voice activated computer dictation system in their offices.

The firm has set out its position quite clearly in the following memorandum:

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FACTS:

A Manufacturing company has developed a product specifically designed to assist lawyers and law firms in their daily practice ("the Product"). The product is called "Law-Talk" and is a voice activated computer dictation system. The company wishes to market its product specifically to the legal profession. One marketing strategy will be to produce a short video which, among other things, will feature a member of the bar, holding himself out to be a member of the bar, providing information on the product, detailing how the product has assisted his practice and endorsing the product.

AUDIENCE:

The manufacturer plans to market the product to the legal profession by setting up private demonstrations of the product with law firms and sole practitioners. Meetings will be scheduled in advance and presentations given of the practical application of the product. Part of the presentation will be a screening of the video. The video will not be publicly broadcast and will not be used to promote to markets other than the legal profession.

RULE IN QUESTION:

Rule 12 (5)(a) of the Rules of Professional Conduct:

Advertising and Making Legal Services Available

5. The lawyer shall not:

- (a) permit the lawyer's name to appear as solicitor, counsel or Queen's Counsel on any advertising material offering goods (other than securities or legal publications) or services to the public.

QUESTIONS CONSIDERED BY THE COMMITTEE:

1. Would a member of the bar be in breach of Rule 12 (5)(a) by participating in the promotion of the product in the manner outlined above?
2. If the answer to Question 1 is in the affirmative, are there any qualifications which might be placed on the factual scenario which would render it inoffensive to the Rule?

The "mischief" at which Rule 12 (5)(a) is directed is the protection of three of the legal profession's fundamental principles. The principles are: 1) encouraging and maintaining the respect and dignity of the legal profession in the eyes of the public; 2) encouraging public confidence in the administration of justice; and 3) discouraging the misuse of the credibility and the high regard held by the public for the legal profession.

The Committee is of the view that none of these principles or ideals are compromised by the above proposal. The situation is no different than a lawyer's endorsements of a legal text. The target audience for the video is other lawyers.

The Committee recommends the proposal does not infringe Rule 12 (5)(a).

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3. CONFIDENTIALITY OF INFORMATION - RULE 4

A lawyer wrote the Law Society concerning his professional obligations in the following situation.

Subsequent to the hearing and the decision of a Tribunal the lawyer learns from a third party that his client was untruthful in his testimony before the Tribunal in a material matter. The lawyer confronted his client who admitted his untruthfulness. The lawyer was of the view the decision of the Tribunal would have been different had the client told the truth. The lawyer enquired as to whether he had any obligation to advise the Tribunal of the false evidence.

The Committee felt Rule 4 and Commentaries 2 and 4 applied and the lawyer should be so advised.

Rule 4 and Commentary 2 and 4 read as follows:

The lawyer has a duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, and should not divulge any such information unless expressly or impliedly authorized by the client or required by law to do so.

2. This ethical rule must be distinguished from the evidentiary rule of lawyer and client privilege with respect to oral or documentary communications passing between the client and the lawyer. The ethical rule is wider and applies without regard to the nature or source of the information or the fact that others may share the knowledge.

4. The lawyer owes the duty of secrecy to every client without exception, and whether it be a continuing or casual client. The duty survives the professional relationship and continues indefinitely after the lawyer has ceased to act for the client, whether or not differences may have arisen between them.

The Committee felt the result would be different if the lawyer learned of the client's untruthfulness during the course of the hearing. In that case the lawyer would have to withdraw if the client refused to correct the untruth.

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

M. Somerville,
Chair

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

Item A.-1. - Paper prepared by Mr. M. Cullity for discussion purposes.
(Appendix A - A-3)

Copies of the following letters were distributed to the Benchers:

- (1) Letter from Ms. Lindsay MacDonald, Counsel, The Law Society of Alberta to Mr. Stephen Traviss dated October 25, 1994.

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- (2) Letter from Mr. Stephen Traviss to Ms. Lindsay MacDonald dated October 19, 1994.
- (3) Letter from Mr. William J. MacLeod, Q.C., O'Connor MacLeod to ALL BENCHERS dated October 21, 1994 re: O'Connor MacLeod.
- (4) Article in the Law Times re: What's in a name? A lot, according to one firm.
- (5) Letter from Mr. Blair S. Taylor, O'Connor, MacLeod to Mr. Stephen E. Traviss dated October 7, 1994 re: O'Connor MacLeod.
- (6) Letter from Mr. Blair S. Taylor, O'Connor MacLeod to Mr. Paul S. A. Lamek, Q.C. dated October 7, 1994 re: O'Connor MacLeod.
- (7) Letter from Mr. Stephen E. Traviss to Mr. Blair S. Taylor dated October 3, 1994.

It was moved by Ms. Curtis, seconded by Mr. Brennan that Rule 12 of the Rules of Professional Conduct be amended by deleting paragraph 7(d).

Lost

ROLL-CALL VOTE

Arnup	Abstain
Bastedo	For
Bellamy	For
Blue	Against
Brennan	For
Carter	For
Cullity	Against
Curtis	For
Elliott	For
Feinstein	Against
Finkelstein	Against
Goudge	For
Graham	Against
Hickey	For
Howie	For
Kiteley	Against
Krishna	Against
Lamont	For
Lax	For
Lerner	Against
McKinnon	Against
Manes	For
Moliner	Against
Murphy	For
Murray	Against
Ruby	Against
Scott	Against
Sealy	For
Strosberg	Against
Thom	Against
Topp	For
Wardlaw	Against
Weaver	Against
Yachetti	Against

THE BALANCE OF THE REPORT WAS ADOPTED

ADMISSIONS AND MEMBERSHIP COMMITTEE (Item B.-B.4.3 withdrawn)

Meeting of October 13, 1994

Mr. Campbell presented for Convocation's approval Item A.-A.1. re: Requirements for Transfer and Item A.-A.2. Publication of Admissions Hearings.

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, October 13, 1994 the following members being present: Mr. C. Campbell (Chair), Ms. M. Moliner, Messrs. D. Murphy, K. Howie, and G. Farquharson.

Also present: R. Tinsley, M. O'Connor, C. Shaw.

A.
POLICY

A.1. REQUIREMENTS FOR TRANSFER FROM ANOTHER CANADIAN JURISDICTION

A.1.1. This item was deferred from June 1994 Convocation.

A.1.2. In its June 1993 report your Committee made recommendations with respect to revisions of the requirements to transfer from another Canadian common law jurisdiction under section 4(1) of Regulation 708. Convocation requested that the recommendations be further revised and that a comprehensive package be prepared to encompass section 4(2) of the Regulation with respect to applicants for transfer from Quebec.

A.1.3. Your Committee had before it for consideration the decision of the Quebec Superior Court in Richards v. Bateau du Quebec. The issue in this case was whether the requirement of three years practice in another Canadian jurisdiction in order to be eligible to transfer to Quebec is unconstitutional.

A.1.4. Regulation 708 made under the Law Society Act provides as follows:

A.1.5. Section 4(1)(a) - an applicant may be called to the bar and admitted as a solicitor who has been engaged in the active practice of law in one or more common law provinces or territories of Canada for a period or periods totalling at least three years within the five year period immediately preceding the application;

A.1.6. Section 4(2)(a) - an applicant may be called to the bar and admitted as a solicitor who has been engaged in the active practice of law in the Province of Quebec for a period or periods totalling three years within the five year period immediately preceding the application.

A.1.7. The Society retained Counsel to provide an opinion as to the validity of the requirement of three years of active practice to be eligible to transfer to Ontario from another Canadian jurisdiction in light of the Richards decision.

- A.1.8. The opinion provided that, in essence, the Society may require transfer applicants to comply with standards for admission which are equivalent to those required of students proceeding through the Bar Admission Course.
- A.1.9. Your Committee also considered the following: 1) transfer requirements of the other provinces; 2) the nature of their pre-call training; and 3) the Protocol prepared by the Federation of Law Societies Committee on Interjurisdictional Practice.
- A.1.10. In reviewing the criteria transfer applicants should be required to meet, your Committee considered the requirements of pre-call training in Ontario including the academic requirements for entry to the Bar Admission Course and the seventeen months duration of the course.
- A.1.11. Your Committee now recommends that the transfer requirements be revised as follows:
- 4(1) Upon the recommendation of the Committee, an applicant who is qualified to practise law in any province or territory of Canada outside Ontario may be called to the bar and admitted as a solicitor provided the applicant,
- (a) is of good character;
 - (b)
 - (i) is a graduate of a law course, approved by Convocation, in a university in Canada, or
 - (ii) has a certificate of qualification issued by the Joint Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans;
 - (c) for a period or periods totalling at least seventeen months within the three year period immediately preceding the application, has been engaged in,
 - (i) the active practice of law as a member of a law society or equivalent body which is a member society of the Federation of Law Societies of Canada,
 - (ii) the pre-call education program of a member society of the Federation of Law Societies of Canada, or
 - (iii) a combination of the activities referred to in subclauses (i) and (ii);
 - (d) files a certificate of good standing issued by a member society of the Federation of Law Societies of Canada; and
 - (e) passes the transfer examination as prescribed from time to time by Convocation.
- (2) For purposes of this section, an applicant shall be deemed to have been engaged in the pre-call education program of a member society of the Federation of Law Societies of Canada when,
- (a) enrolled and participating in a teaching or education program prescribed by that society and distinct from a university law course; or

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- (b) serving under articles of clerkship to a member of that society in accordance with the rules or regulations of that society.

(3) A person whose engagement in the activities referred to in clause (1)(c) does not amount to the total of seventeen months required by that clause may satisfy the requirement of that clause by serving under articles of clerkship in Ontario for the length of time required to bring the total to seventeen months.

(4) On each occasion when a candidate for call and admission under subsection (1) sits the transfer examination referred to in clause (1)(e) the candidate must present evidence that the candidate,

- (a) has been engaged in the activities set out in subclauses (i), (ii) or (iii) of clause 1(c) for a period or periods totalling at least seventeen months within the three year period immediately preceding the examination; and
- (b) is a member in good standing of a member society of the Federation of Law Societies of Canada.

A.2. PUBLICATION OF ADMISSIONS HEARINGS

A.2.1. This item was deferred from June 1994 Convocation.

A.2.2. At its January 13, 1994 meeting your Committee was asked to consider whether a policy with regard to the regular publication of scheduled Admission Hearings should be established. A discussion ensued which canvassed various options. Following the discussion, your Committee requested that this item be deferred to the February meeting.

A.2.3. At its February meeting your Committee reviewed the Society's policy with respect to the publication of discipline matters, which is as follows:

1. Public/Media enquiries: once a complaint is authorized and issued, the Society will release, upon request, the name of the solicitor facing discipline together with the allegations contained in the complaint;
2. Prior notification: a list of hearings scheduled to take place in the forthcoming month is provided to the media at the end of each month. The following information is included: the name of the solicitor, the allegations in the complaint and the date and place of the hearing.

A.2.4. In its discussions, the nature of admissions hearings was explored and compared to that of discipline hearings.

A.2.5. Your Committee observed that admission hearings frequently arise because the applicant has disclosed information about his or her conduct to the Society and asked whether the conduct in question will constitute a bar to admission. A hearing may be required because the Admissions Committee is unable to decide the "good character" issue without the benefit of hearing the evidence and observing the applicant.

- A.2.6. In discipline matters however, the hearing arises only after there has been an investigation of the member's conduct and a decision made to charge the member with professional misconduct or conduct unbecoming.
- A.2.7. Further, your Committee was particularly struck by the fact that in admission hearings, counsel for the Society often takes no position on the question of good character, but ensures that all the relevant information necessary to decide the question is placed before the panel. Your Committee contrasted this role with that of the Society's counsel in discipline matters where, in every case, counsel asserts that the member is guilty of professional misconduct.
- A.2.8. Your Committee concluded that there is a significant distinction to be drawn between the two processes. Your Committee then discussed whether that distinction justifies a different policy with respect to the publication of hearings.
- A.2.9. Initially the Committee reached the conclusion that a different policy was justified and proposed the following policy:
1. Public/Media Enquiries: If an inquiry is made to the Society about a specific individual who is subject to a hearing, the fact that an admission hearing has been ordered will be disclosed, together with the date of the hearing (if known). No other particulars will be provided.
 2. Prior notification: There will be no prior notification i.e. a list of admission hearings scheduled to take place in the forthcoming month will not be provided to the media at the end of each month.
- A.2.10. Upon further reflection your Committee decided to revisit this issue at its meeting on March 24th, 1994.
- A.2.11. At that meeting the discussion focused on the process leading up to the decision that a hearing pursuant to s. 27 of the Law Society Act is required. Your Committee articulated the concern that a hearing is sometimes ordered because the Committee feels unable to dispose of the issue on the basis of the written material before it. In other words the Committee is not satisfied as to the 'good character' of the applicant nor is it willing to assert that the applicant is not of good character.
- A.2.12. The Committee felt that in those cases it might well assist in the process to arrange an informal meeting with the applicant to review the material as well as provide an opportunity for the Committee to observe the applicant and ask questions. This meeting would take place before the decision about the necessity of a hearing is made.
- A.2.13. With this additional step of an informal meeting your Committee felt it would be better able to deal with those troublesome cases where there is genuine ambivalence on the part of committee members concerning the necessity for a hearing.

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- A.2.14. Your Committee then proceeded to review its earlier position. In light of the introduction into the process of an informal meeting with the applicant, the Committee concluded that it was appropriate to follow the practice of prior notification established for discipline hearings, namely that a list of forthcoming admission hearings be provided to the media. Unlike the practice for discipline hearings, however, no particulars, other than the name of the applicant and the date and place of the hearing, will be provided.
- A.2.15. In conclusion, your Committee therefore recommends that Convocation adopt the following policy regarding publication of admission hearings:
1. Public/Media Enquiries: If an inquiry is made to the Society about a specific individual who is subject to a hearing, the fact that an admission hearing has been ordered will be disclosed, together with the date of the hearing (if known). No other particulars will be provided.
 2. Prior notification: A list of admission hearings scheduled to take place in the forthcoming month will be provided to the media at the end of each month. The following information will be included: the name of the applicant and the date and place of the hearing. No other particulars will be provided.

B.
ADMINISTRATION

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

B.1.1. The following candidates have met all the requirements to proceed with transfer under section 4(1) of Regulation 708 made under the Law Society Act:

Cindy Freedman	Alberta
Joseph A. Pollock	Manitoba
Michael W. McCandless	Manitoba

Approved

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

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

Caroline Bilodeau
Kristen Zimakas

Approved

27th October, 1994

B.3. REINSTATEMENT FOLLOWING SUSPENSION - PETITION FOR WAIVER OF EXAMINATIONS

B.3.1. Paul Knight was called to the Bar May 23, 1986. He was suspended November 27, 1987 for non-payment of the E&O levy. Mr. Knight now seeks to be reinstated without being required to sit the requalification examination.

B.3.2. Mr. Knight lived in Japan from 1987 to 1989 and then in the United Kingdom from 1989 to the present. In his letter of September 16, 1994 Mr. Knight states that while he has not practised law since 1987 he has used his legal training in his career as an investment banker. Mr. Knight is with the European Bank for Reconstruction and Development, and has focused on privatisation and project finance, mostly in Eastern Europe and the former Soviet Union.

B.3.3. The applicant's letter of September 16, 1994 was before the Committee for consideration.

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

B.4. MEMBERSHIP UNDER RULE 50

B.4.1. (a) Retired Members

The following members who are sixty-five years of age and fully retired from the practice of law, have requested permission to continue their memberships in the Society without payment of annual fees:

Murray Cohl	Toronto
William John Hemmerick	Toronto
Robert Henderson MacDonald	Richmond Hill
Thomas Phillip Mitchell	Chatham
James Corry Neilson	Stratford
Keith Gordon Pedwell	St. Catharines
Vincent Paul Reid	Toronto
Douglas John Sherbaniuk	Mississauga
William Jean Solloway	New York, NY., USA

Approved

B.4.2. (b) Incapacitated Members

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

Murray William Gemmell	Ottawa
Elizabeth Anne Hoyle	Durham
Philip Desmond Sullivan	Stevensville

Approved

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B.4.3. (b)(ii)

James Wild Eayrs of Toronto was granted a deferral of payment of the annual fee for 1992/93 and 1993/94. At the time the deferral was granted, Mr. Eayrs believed himself to be incapacitated and unable to practise law on a temporary basis only. However, it now appears that his disability will prohibit him from practising for an indefinite period of time. He has applied under Rule 50 on a retroactive basis so that he may be granted incapacitated status without payment of the fees previously deferred.

Note: Item B.4.3. Withdrawn

Approved

B.6. RESIGNATION - RULE 12

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

Laurie Ruth Stein	Toronto
Ronald Frank Bonar	Oakville
Christina Elizabeth Swift	Danville, California
Peter Stanley McBirnie	Thorndale

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

Approved

C.
INFORMATION

C.1. CHANGES OF NAME

C.1.1.	<u>From</u>	<u>To</u>
	Neva Louisa Vehovec <u>Tersigni</u> (Birth Certificate)	Neva Louisa <u>Vehovec</u>
	Joanne Julie Dickinson <u>Lalach</u> (Change of Name Certificate)	Joanne Julie <u>Dickinson</u>
	Duriya <u>Patel</u> (Marriage Certificate)	Duriya <u>Patel - Altaf</u>
	Rosalie Anne <u>Scheele</u> (Marriage Certificate)	Rosalie Anne <u>Evans</u>
	Elizabeth Bucci <u>Bryson</u> (Birth Certificate)	Elizabeth <u>Bucci</u>

Noted

27th October, 1994

C.2. ROLLS AND RECORDS

C.2.1. (a) Deaths

The following members have died:

Wilmot Bulkley Gordon Peterborough	Called June 17, 1937 Died March 27, 1993
Joseph Patrick Mangan Ajax	Called October 20, 1921 Died September 26, 1993
John King Oldfield Coral Gables, Fl., USA	Called March 21, 1946 Died August 11, 1994
Brock MacDonald Evans Bradford	Called June 20, 1935 Died August 26, 1994
Paul Charles Neubauer Toronto	Called April 9, 1976 Died September 16, 1994
Roland John Baldassi Windsor	Called June 25, 1953 Died September 17, 1994
Robert William Kerr Burlington	Called October 20, 1978 Died September 18, 1994

Noted

C.2.2. (b) Disbarments

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

James Douglas Leith Ross Toronto	Called June 27, 1957 Disbarred - Convocation September 22, 1994
Paul Douglas Squires Mississauga	Called March 29, 1977 Disbarred - Convocation September 22, 1994
Leon Wickham Toronto	Called April 8, 1987 Disbarred - Convocation September 22, 1994

Noted

27th October, 1994

C.2.3. (c) Membership in Abeyance

Upon his appointment to the office shown below, the membership of the following member has been placed in abeyance under Section 31 of The Law Society Act:

John David Richard
Ottawa

Called June 25, 1959
Appointed to Federal Court of Canada
August 30, 1994

Noted

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

C. Campbell
Chair

The Chair asked that an amendment be made by deleting the words "is of good character" from the transfer requirements.

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

Carried

It was moved by Mr. Campbell, seconded by Ms. Moliner that Item A.-A.2. be adopted.

Carried

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

FINANCE AND ADMINISTRATION COMMITTEE (Items B.-3. & 4. deferred to October 28, 1994)

Meeting of October 13, 1994

Mr. Bastedo presented Item B.-1. re: financial statements relating to the General Fund and the Lawyers Fund for Client Compensation.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of October, 1994 at 10:30 a.m., the following members being present: T.G. Bastedo (Chair), R.W. Murray (Vice Chair), J.J. Wardlaw (Vice Chair), R.W. Cass, C. Curtis, A. Feinstein, N. Finkelstein, P. Furlong and M. Moliner. Also in attendance was T. Carey. Staff in attendance were D.A. Crosbie, R.F. Tinsley, D.E. Crack, D.N. Carey, and L. Johnstone.

27th October, 1994

B.
ADMINISTRATION

1. DRAFT FINANCIAL STATEMENTS TOGETHER WITH THE AUDITORS' OPINION FOR THE YEAR ENDED JUNE 30, 1994

Draft Audited Financial Statements [pages 13 →] for the Society's fiscal year ended June 30, 1994 together with a highlights memorandum from the Director of Finance and Administration [pages 4 - 12] are attached.

The Committee was asked to approve the financial statements for the General Fund and the Lawyers' Fund for Client Compensation.

Approved

The attached statements include the Financial Statements for the Consolidated Errors and Omissions Insurance Fund which are to be presented for approval at a special joint meeting of the Insurance and Finance and Administration Committees on October 27, 1994.

2. GENERAL INSURANCE RENEWAL

The Law Society's general insurance coverage commences on October 1st each year.

In addition to the Law Society also included as named insurers are: the Law Society Foundation, the Lawyers' Professional Indemnity Company, and the Law Foundation of Ontario.

The total premium for the year commencing October 1st, 1994 is \$57,424 compared to \$60,194 last year.

The reason for this decrease is that an examination of the cost for replacement of the buildings at Osgoode Hall indicated that there was over valuation and coverage can be reduced from \$91,700,000 to \$81,088,000.

27th October, 1994

			Premiums		
			1994/95 Quote	1993/94 Actual	1992/93 Actual
1.	<i>Property</i> (in addition to General Building & contents, at all locations, includes fine arts, library books, valuable papers etc.) <i>Insurers:</i> Guardian Insurance Company 15% Royal Insurance Company 30% Zurich Insurance Company 55%	\$81,088,000	\$39,243	\$42,182	\$41,265
2.	<i>Boiler & Machinery</i> (includes business interruption) <i>Insurer:</i> Boiler Inspection and Insurers Company	5,000,000	2,581	2,412	2,232
3.	<i>Computer</i> (hardware and software) <i>Insurers:</i> Guardian Insurance Company	2,000,000	5,850	5,850	5,850
4.	<i>Primary General Liability, Crime, Tenants Legal Liability, etc.</i> <i>Insurer:</i> Guardian Insurance Company	5,000,000	8,000	8,000	9,000
5.	<i>Umbrella Liability</i> (in excess of N° 4 above) <i>Insurer:</i> Royal Insurance Company	5,000,000	1,750	1,750	750
TOTAL			\$57,424	\$60,194	\$59,097

The Facilities Subcommittee recommended that the insurance be placed and the above premiums be approved for payment.

Approved

3. SUSPENSION OF MEMBERS - LATE FILING FEE

There are members¹ who have not complied with the requirements respecting annual filing and have not paid their late filing fee.

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

The Committee was asked to recommend that the rights and privileges of these members be suspended on October 27, 1994 if the late filing fee remains unpaid on that date.

Approved

4. SUSPENSION OF MEMBERS - ANNUAL FEES

There are members¹ who have not paid the first instalment of 1994/95 annual fees which were due on July 1, 1994. Two notices have been sent.

¹ to be included in motion to Convocation

27th October, 1994

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on October 27, 1994 effective November 1, 1994 if the fees remain unpaid on that date.

Approved

Note: Items 3. & 4 deferred

C.
INFORMATION

1. LEGAL MEETINGS AND ENTERTAINMENT

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

October 5, 1994	Medico-Legal Dinner Convocation Hall
October 26, 1994	Judges' Reception Convocation Hall
October 28, 1994	African Legal Clinic Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

T. Bastedo
Chair

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

- Item B. - 1. - Memorandum to the Chair and Members of the Finance and Administration Committee from Mr. David Crack dated October 6, 1994 re: Audited Financial Statements for the Year ended June 30, 1994. (pages 4 - 12)
- Item B. - 1. - Copy of the Financial Statements of The Law Society of Upper Canada dated June 30, 1994. (pages 1 - 23)

It was moved by Mr. Bastedo, seconded by Mr. Wardlaw that the financial statements for the General Fund and the Lawyers Fund for Client Compensation be adopted.

Carried

27th October, 1994

The financial statements for the Consolidated Errors and Omissions Insurance Fund would be presented at the Special Convocation on October 28, 1994.

THE BALANCE OF THE REPORT WAS ADOPTED

DISCIPLINE COMMITTEE

Meeting of October 13, 1994

Mr. Scott presented Item A.-A.2. re: Single Benchers Discipline Panels for Convocation's approval.

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 13th of October, 1994 at 1:30 in the afternoon, the following members being present:

D. O'Connor (Acting Chair), D. Bellamy (Vice-Chair), R. Topp (Vice-Chair), R. Carter, N. Graham, K. Howie, L. Legge, S. Lerner, M. McPhadden, M. Moliner, P. Peters, C. Ruby, S. Thom.

M. Brown, S. Kerr, G. Macri, A. Brockett, D. McKillop, D. Robertson, E. Spears, H. Werry and J. Brooks also attended.

A.
POLICY

A.1. Expediting the Discipline Hearing Process

A.1.2. At the September 13, 1994 meeting of the Committee, staff had been asked to prepare a proposal for expediting the hearing process generally, and in particular, hearings into Complaints of an administrative nature.

A.2.2. Your Committee recommends that Convocation adopt, for a trial period of six months, the following change in procedure:

- (a) Set dates and consent motions for adjournment shall no longer be scheduled on regular hearing days (that is, the 5 days scheduled each month for hearings);
- (b) An Hearings Assignment Tribunal or "Assignment Court" shall be instituted, as follows:
 - i) The Hearings Assignment Tribunal shall be held on the first and third Mondays of each month.

- ii) The Hearings Assignment Tribunal shall commence at 9:00 a.m.
 - iii) A single Benchler ("Hearings Assignment Benchler") shall be appointed by the Chair of Discipline to preside for a set period of time to provide continuity to the process.
 - iv) The Hearings Assignment Benchler shall hear set dates and consent motions for adjournment.
- (c) Complaints of an administrative nature and matters authorized as Invitations to Attend shall be scheduled to be heard on a specified day or days in a month. At the outset, the Wednesday before Committee Day shall be the day on which these hearings are held.
- (d) Regular hearing days will be limited to contested motions for adjournment, hearings of Complaints and other matters which arise and must be heard on an expedited basis.

A.2. Single Benchler Discipline Panels

- A.2.1. On September 23, 1994, Convocation adopted this Committee's recommendation that an appropriate legislative or regulatory amendment be sought, on an expedited basis, to permit a single benchler to hear complaints in relation to administrative offences.
- A.2.2. It is recommended that the Law Society seek an amendment to the Regulation to implement the recommendation of this Committee in an expeditious manner.
- A.2.3. At present, section 9 of Regulation 708 made under the *Law Society Act* provides that a complaint shall be heard before a hearing panel comprising at least three benchlers. In certain circumstances, section 9 permits a complaint to be heard by a hearing panel comprising only two benchlers. Subsections (3) and (5) of section 9 currently read:

9.

* * * *

- (3) Subject to subsections (4) and (5), a quorum of the Committee is three members of the Committee who are not benchlers by virtue of their office.

* * * *

- (5) If a member of the Committee, after beginning the hearing of a complaint, is unable to continue because he or she has been appointed to the judiciary, has ceased to be a benchler, has become permanently physically or mentally disabled, suffers from a long-term illness or has died, the quorum of the Committee for the purpose of completing the hearing of the complaint and reporting to Convocation is two members of the Committee who are not benchlers by virtue of their office.

- A.2.4. This Committee considered the proposed amendment at Attachment "A" and recommends that it be approved in its present form, having considered in particular, the following provisions of the proposed amendment:

- (a) that the jurisdiction of the single Benchers Panels be limited to administrative offences or to other offences with the consent of both parties;
- (b) that lay Benchers be entitled to serve on single Benchers Panels; and
- (c) that former Treasurers be entitled to serve on single Benchers Panels.

Note: Motion, see page 454

- A.2.5. This Committee asks that Convocation approve the proposed amendment to section 9 of Regulation 708 as provided at Attachment "A".

B.
ADMINISTRATION

B.1. Exchange of information between Discipline process and the Lawyers' Professional Indemnity Company and departments within the Law Society

- B.1.1. The Committee was asked to formulate a policy regarding the exchange of information between the Discipline process (that is, Discipline, Audit and Complaints Departments) and the Lawyers Professional Indemnity Company. In particular, the Committee was asked to address:

- (a) Requests by L.P.I.C. to the Discipline, Audit and Complaints Departments for counsel briefs prepared by the Audit Department. These requests may be made either prior to the issuance of a formal Complaint or following the issuance of a formal Complaint.
- (b) Requests by the Discipline, Audit and Complaints Departments to L.P.I.C. for the investigation reports and opinions of its examiners or counsel.

- B.1.2. The Committee was also asked to formulate a policy regarding the exchange of information, in particular counsel briefs, between the Discipline process and other departments within the Law Society, such as,

- (a) The Lawyers Fund for Client Compensation, which may hold its hearings prior to the issuance of a formal Complaint which in turn may necessitate the disclosure of information to claimants and the Solicitor.
- (b) The Admissions Department, in relation to re-admission matters.
- (c) The Bar Admission Course, which may seek information as to whether a member is a suitable articling principal.

27th October, 1994

- B.1.3. In its discussions your Committee recognized that the Society is one institution and that unless there are compelling reasons, the exchange of information should take place. Your Committee considered where the discretion to disclose resides, how objections to disclosure may be considered, the content of material to be disclosed, and the conditions under which disclosure should take place.
- B.1.4. Your Committee asked staff to draft proposed guidelines based on the Committee's discussions which will be considered at the November 1994 meeting of the Committee.

C.
INFORMATION

- C.1. Authorization of Discipline Charges
- C.1.1. Once a month, the Chair and/or the Vice-Chairs of your Committee meet with staff to consider requests for formal disciplinary action against members.
- C.1.2. The following table provides a summary of Complaints authorized to date in 1994.

Total number of charges authorized to date in 1994	
January	20
February	56
March	51
April	24
May	67
June	23
July/August	61
September	40
TOTAL	342

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

D. Scott
Chair

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

- Item A. - A.2.4. - Proposed Amendment of Section 9 of Regulation 708 to permit single-member Discipline Hearing Panels.
(pages A-1 - A-3)

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

The Treasurer and Benchers had as their guests for luncheon, Madam Justice Karen Weiler and Madam Justice Louise Arbour.

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

The Treasurer, Arnup, Bastedo, Blue, Brennan, Campbell, Carter, R. Cass, Curtis, Elliott, Feinstein, Finkelstein, Graham, Hickey, Howie, Kiteley, Krishna, Lawrence, Lax, Lerner, McKinnon, Manes, Moliner, Murray, Ruby, Scott, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

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IN PUBLIC

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

DISCIPLINE COMMITTEE (cont'd)

It was moved by Mr. Scott, seconded by Mr. O'Connor that the proposed amendment to section 9 of Regulation 708 be adopted.

It was moved by Mr. McKinnon but failed for want of a seconder that the proposed amendment to section 9 of Regulation 708 be amended by adding that lay benchers and former Treasurers sit as single Bencher discipline panels subject to the discretion of the Chair or Vice Chair.

It was moved by Ms. Lax that the recommendation be adopted but as a matter of policy no lay bencher or former Treasurer be appointed until Convocation has an opportunity to consider the policy.

Not Put

It was moved by Ms. Curtis, seconded by Ms. Lax that Item A.2.1. be approved but that Item A.2.4. (b) and (c) not be approved until there is a further review by Convocation of the policy issue as to the involvement of lay benchers and former Treasurers.

Carried

The Scott/O'Connor motion was not put.

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

SPECIALIST CERTIFICATION BOARD

Meeting of October 13, 1994

Mr. Yachetti presented Item B.-B.2. re: Program Development for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday, the 13th of October, 1994 at nine-thirty in the morning, the following members being present: R.D. Yachetti (Chair), J. Callwood, P.G. Furlong, C.D. McKinnon, M.L. Pilkington and G.P. Sadvari. C. Giffin, new Program Administrator, and S. Thomson, were also present.

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

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

The Workers' Compensation Law Specialty Committee met on Thursday, the 29th of September, 1994 at five o'clock in the afternoon.

The Criminal Law Specialty Committee met (conference call) on Friday, the 30th of September, 1994 at one o'clock in the afternoon.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 11th of October, 1994 at eight-thirty in the morning.

A.
POLICY

A.1. SPECIALIST CERTIFICATION AND THE PRACTICE REVIEW PROGRAMME

- A.1.1. Your Board approved the proposed procedure to be used when a member who has applied for certification as a Specialist is vetted by the Professional Standards Department and is considered to be an appropriate candidate for the Practice Review Programme. (ATTACHMENT "A")

A.2. EXTENSION OF DUAL CIVIL & CRIMINAL LITIGATION SPECIALIST DESIGNATION

- A.2.1. Your Board approved a recommendation that lawyers certified in the past as "Civil & Criminal Litigation Specialists" should be entitled to continue using this designation until their separate recertification applications in Civil Litigation and/or Criminal Law have been completed.

B.
ADMINISTRATION

B.1. NEW PROGRAM ADMINISTRATOR

- B.1.1. The Board met and welcomed the new Administrator of the Specialist Certification Program, Carol Giffin. The Board members expressed their appreciation to Sarah Thomson for her contribution to the Program over the past six years.

27th October, 1994

B.2. PROGRAM DEVELOPMENT

- B.2.1. Your Board has resolved that an expert should be retained to prepare a projection for the growth and direction of the Specialist Certification Program to include the training, testing and continuing education of lawyers in cooperation with other programs or organizations including law schools.
- B.2.2. Your Board recognizes the need for an increase in staffing to accommodate the Program's rapid growth, bearing in mind budget restrictions and the commitment of the Board to maintain self-funding status.

C.
INFORMATION

C.1. CERTIFICATION OF SPECIALISTS

- C.1.1. Your Board is pleased to report the certification of the following lawyers as Civil Litigation Specialists:

Nancy L. Ralph (of Toronto)
Gary W. Tranmer (of Kingston)

C.2. RECERTIFICATION OF SPECIALISTS

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

John R. Cannings (of Toronto)
Robert W. Cosman (of Toronto)
Stephen T. Goudge (of Toronto)
Peter L. Roy (of Toronto)

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

Ross B. Lundy (of Brampton)

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

R. Yachetti
Chair

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

- Item A. - A.1. - Memorandum from Ms. Sue McCaffrey to Ms. Sarah Thomson dated October 6, 1994 re: Specialist Certification and the Practice Review Programme.

(Attachment "A")

27th October, 1994

It was moved by Mr. Blue, seconded by Ms. Elliott that the matter be tabled for consultation with the Mandatory Continuing Legal Education program.

Lost

It was moved by Mr. Yachetti, seconded by Mr. Manes that Item B.-B.2. be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of October 13, 1994

The Report of the Unauthorized Practice Committee was deferred to the January 1995 Convocation.

NOTICE OF MOTION

A Notice of Motion for the November Convocation was made by Ms. Kiteley, seconded by Mr. O'Connor THAT:-

- (1) Benchers who have sat for 2 full consecutive terms are not eligible to stand for re-election for a third consecutive term; and
 - (2) the office of life Bencher be eliminated.
-

CONVOCATION ROSE AT 2:55 P.M.

Confirmed in Convocation this day of , 1995

Treasurer